

No. 13727

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United States  
Court of Appeals  
For the Ninth Circuit.

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CONSOLIDATED FLOWER SHIPMENTS,  
INC.-BAY AREA,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD and AIR-  
BORNE FLOWER AND FREIGHT TRAF-  
FIC, INC.

Respondents.

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Transcript of Record

Volume II  
(Pages 427 to 569)

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Petition to Review an Order of the  
Civil Aeronautics Board.

FILED

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PAUL P. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. 12-18-53

CLERK



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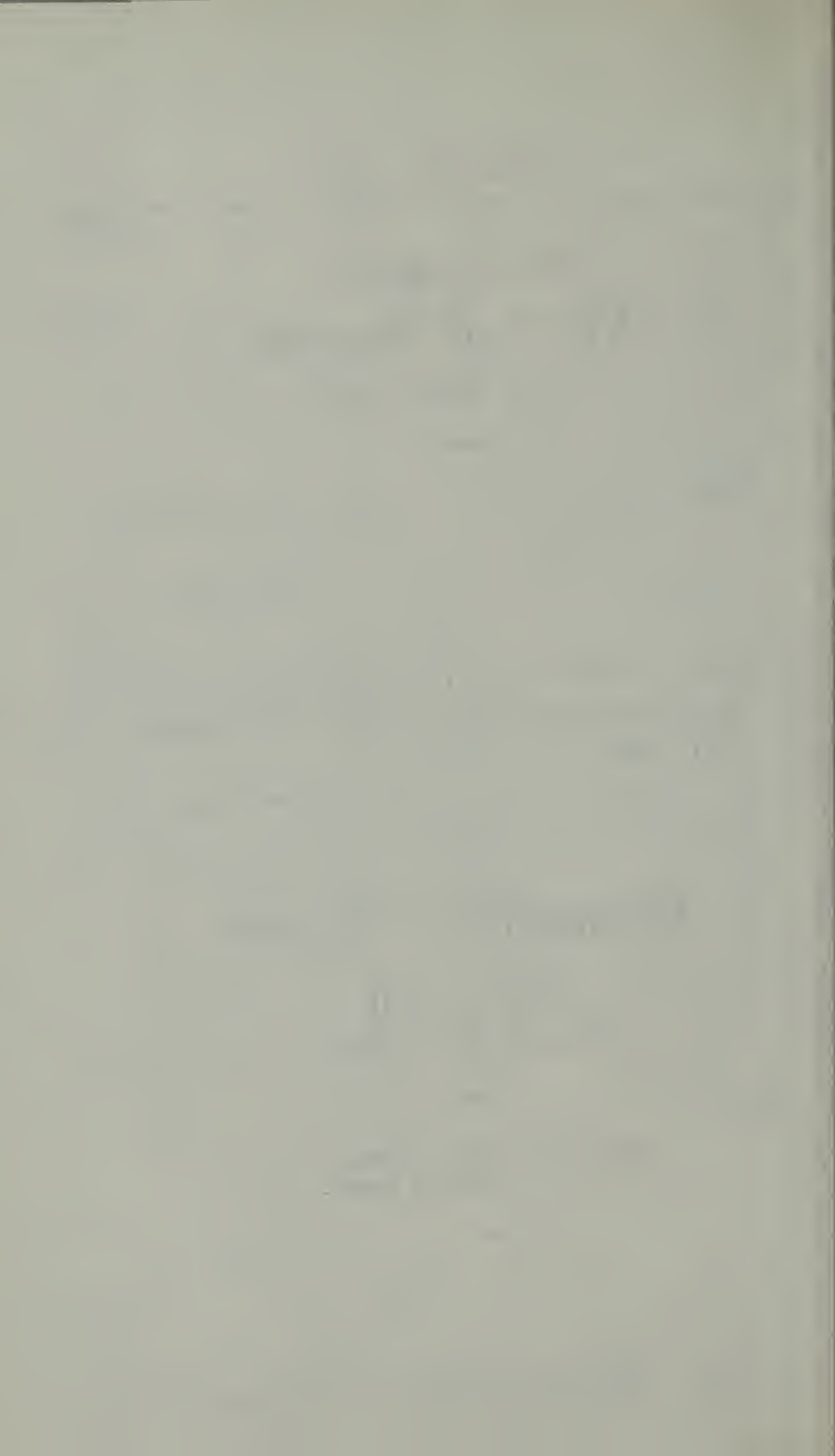
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America, Civil Aeronautics Board  
Washington, D. C.

Docket No. 4902, et al.

In the Matter of:

CONSOLIDATED FLOW ER SHIPMENTS,  
INC., BAY AREA; JOHN C. BARULICH,  
WILLIAM ZAPPETTINI.

February 29, 1952.

The above-entitled matter came on for hearing,  
pursuant to adjournment, at 10:00 a.m.

Before: Richard A. Walsh, Examiner.

Appearances:

(As heretofore noted.)

\* \* \*

## ALFRED G. ENOCH

was called as a witness for and on behalf of Bay Area, and, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Gaudio:

Q. Mr. Enoch, will you state your full name, occupation and address?

A. Alfred Enoch, wholesale florist.

Do you want the business address?

Q. Yes. A. Los Altos, California.

Q. Are you what is known as a grower of flowers, as well as just a wholesaler?

A. We have interests in growing, leases of fields, and shipping.

Q. How long have you been in that business or occupation?

A. My own personal business, since the first of 1947, I believe.

Q. Since that time, have you had occasion to ship your products to eastern markets via air [819\*] carriers? A. Yes, I have.

Q. Are you a member of Consolidated Flower Shipments, Inc.-Bay Area? A. Yes, I am.

Q. Do you hold any office?

A. Yes, I do, Board of Directors.

Q. You are a member of the Board of Directors?

A. Yes.

Q. Have you had any other office during its organization? A. No.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.



(Testimony of Alfred G. Enoch.)

Q. Have you paid any membership dues or assessments as a member of Bay Area?

A. Yes, what the Bylaws call for.

Q. And what is that?

A. I believe it is \$50 a year, now.

Q. Were you one of the original members of Bay Area as such?

A. Yes, I was.

Mr. Gaudio: Mr. Examiner, I learned only this morning, after discussion with counsel, that certified copies of the special meeting of the Board of Directors of Bay Area held February 9, 1951, were not in my file; they had been sent to Redwood City for filing in the office of the County Clerk of the County of San Mateo, in accordance with the local law; but, I have displayed here a copy to counsel, and would like to read from that for this [820] moment, and then ask that a certified copy in due course be incorporated as Respondent's next exhibit in order, which would be 10, I believe.

Examiner Walsh: That is right, 10.

Mr. Gaudio: Mr. Examiner, also attached to this is a statement which I had previously submitted to the Enforcement Attorney, dated February 13, 1951, under the general heading, "Corporate Status," over my signature, which I will present at this time as part of Exhibit 10.

Examiner Walsh: Do you wish to have that marked for identification?

Mr. Gaudio: And offer it in evidence at this time.

Examiner Walsh: Any objection?

(Testimony of Alfred G. Enoch.)

Mr. Wolf: No objection.

Examiner Walsh: You are referring to the entire exhibit, are you not?

Mr. Gaudio: Yes, this would be the entire exhibit.

Examiner Walsh: Identified as Bay Area's Exhibit 10, with the attachment letter, "Corporate Status," signed by Mr. Gaudio, are received in evidence without objection.

(The documents above referred to were marked for identification as Bay Area's Exhibit No. 10, and were received in evidence.)

Q. (By Mr. Gaudio): Were you present at the meeting of the Board of Directors on that occasion, February 9, 1951? [821]

A. I would say I was. Yes, I would say I was there.

Mr. Gaudio: I would like to read for the record at this time minutes of the special meeting of the Board of Directors of Consolidated Flower Shipments, Inc.-Bay Area, South San Francisco, California, February 9, 1951, 8:00 o'clock, p.m.

I am just extracting from this.

Present: William Zappettini, John Nuckton, Alfred Enoch—the present witness—Absent: James Bonaccorsi, C. J. Boodel.

After the usual preambles, it reads:

"Upon motion duly made, seconded and unanimously carried, it was resolved that Article 1-D of the Articles of Incorporation of Consolidated

(Testimony of Alfred G. Enoch.)

Flower Shipments, Inc.-Bay Area, be amended, changed and altered so as to read as follows:

“ ‘D. To purchase, lease, hold, sell, develop, mortgage, convey, or otherwise acquire or dispose of real or personal property.’ ”

The resolution is duly subscribed by John Nuckton, then Secretary, approved by William Zappetini, then Chairman of the Board of Directors. And, as a part of that same exhibit, the written consent of members to amendment to the Articles of Incorporation, which has just previously been read, showing the names of the members subscribing the same, as of July 2, 1951.

Q. (By Mr. Gaudio): You mentioned the payment of dues and assessments, Mr. Enoch. Is it true that under its original incorporation dues [822] were not a prerequisite to membership?

A. That is right.

Q. And that the dues and assessments were promulgated pursuant to the resolution of the Board of Directors of which you were a member at the time? A. Yes.

Q. Do you have any personal knowledge of the intention of the handling of flowers in interstate commerce by air carrier even prior to Bay Area?

A. Yes, quite some time back.

Q. Would you describe what time and under what circumstances that developed?

A. I believe I helped load the first planeload of flowers that ever left San Francisco as a total load.

(Testimony of Alfred G. Enoch.)

I can't remember for sure how far back it was, but it was a chartered plane from United Air Lines, a DC-3 that they had removed the seats from, and we stuffed flowers in it. But it didn't get past Salt Lake City, so I guess it didn't mean much.

Q. To your knowledge, was that the first instance in this business when any shipper sent flowers by air carrier from this area?

A. A full planeload, yes.

Q. Did you thereafter commence shipment of your products by air carrier?

A. I was employed at that time with another company, but [823] when I, myself, started to ship, we started shipping by air.

Q. What year was that?

A. That I started to ship?

Q. Yes.

A. I believe the first of the year 1947.

Q. Between that time and the organization of Bay Area, of which you were a charter member, how did you transport your shipments by air carrier?

A. Practically all myself, straight shipments through the carriers.

Q. You handled and operated your own equipment?

A. We would hire, sometimes, truckers to pick up our boxes and take them to the airlines, and sometimes we would haul them ourselves.

Q. For that, would you pay truck delivery or pick-up charge?

A. That is right.

Q. And these were all straight shipments, you

(Testimony of Alfred G. Enoch.)

say, or, rather, straight sales of prepaid shipments?

A. These were consignment shipments.

Q. Consignment shipments, but direct?

A. But direct. There could have been a few that went airborne, a very small per cent.

Q. Just prior and for a reasonable time prior to the inception of Bay Area as an organization, did you have occasion to [824] ship via Airborne at all?

A. Yes, maybe a few boxes.

Q. Are you a member of any other shippers' organization?           A. None whatsoever.

Q. In so far as your particular business is concerned, will you state for the record what consideration prompted you to seek membership in an organization such as Bay Area?

A. We were shipping straight bills, one box, two boxes, or whatever it happened to be, and ran into this prepaid distribution that only cost 25 cents a shipment for distribution charges, and so then we started lumping our shipments into any given town for transfer out of there. That way, we were able to get into the higher brackets of weight.

Q. When you say "we"—

A. My company.

Q. Your company?           A. Yes.

Q. Did you mean to imply that you might, with another shipper, on your own initiative, group your shipments together?

A. My own personal company would lump the shipments that were going into this one area together, with no other company.

(Testimony of Alfred G. Enoch.)

Q. Are you familiar with the term variously referred to as collect distribution?

A. Yes, I believe so.

Q. Was that practice in vogue at that [825] time?

A. It fluctuated in and out. Some airlines you could ship collect distribution, and some airlines you could ship prepaid distribution.

Q. What was your particular objective in seeking this particular type of service for your shipments?      A. To save myself money.

Q. In what respect?

A. On lower costs for transportation.

Q. You said you were a consignment shipper?

A. That is right.

Q. As a consignment shipper, what effect does the cost of transportation have on your ability to do business or compete in the eastern markets?

A. It is the only way we can compete.

Q. Can you give us some exemplification of that statement so far as the transportation costs compared with the merchandise is concerned?

A. Yes. Only just in the past month the transportation costs, even in consolidation, would run three-fifths of the total selling price of the flowers.

Q. Is that on a per box basis?

A. No. Yes, on the per box basis for the freight.

Q. In other words, your present experience is to the effect that three-fifths of the cost of the merchandise is equal to the transportation costs; is that right? [826]

(Testimony of Alfred G. Enoch.)

A. At certain given times. It will fluctuate from one-tenth up as high as three-fifths, and, once in a while, higher than that. It is very seasonal. Early in the season the flowers sell high, so the freight cost is a smaller percentage, and, as the season progresses and the flowers become cheaper and cheaper, the freight costs take a higher and higher piece. The flowers go down; the freight cost stays the same all the time.

Q. When you say "seasonal," do seasons occur at different times of the year, say, on the West Coast production as compared with Eastern production areas?

A. In my own particular type of shipping, we have three heavy seasons. They run from, starting in the middle of December, until, usually, the middle of March, and then two of the seasons overlap. The asters start in the end of May, and they run on through until the end of September, and in July the chrysanthemums start in and run on through until December or so.

Q. I would like to get more specific on what you mean by the word "season." Is that the period of time in which your market is made available in the East, or the period when your production is available in the West?

A. When our production is available in the West for those varieties of flowers.

Q. In that respect, from a production standpoint, are the eastern markets at a different time

(Testimony of Alfred G. Enoch.)

schedule in production than [827] the western markets?

A. You mean on the same variety of flowers?

Q. Yes. A. Yes, mostly so.

Q. So the status of the season, the weather conditions from the calendar is of some consideration to you as a flower shipper? A. Oh, yes.

Q. Do you find that your membership in Bay Area as a shippers' co-operative organization facilitates your knowledge and information with respect to that fact?

A. By all means. We have to know what weather conditions are, whether a plane can even land or not.

Q. Whether a market might be available due to weather conditions in the East?

A. That is right, because we all wait and hope for the first freeze in the East every year, because, if it comes early enough, it means that much more business, and, if we don't know it until we hear about it, maybe we are a little late sometimes.

Q. Sudden changes in weather conditions, like a sudden freeze or sudden thaw in the East, would that have any effect on your available market?

A. Oh, yes. Normally, right in the middle of the summer, when it is very hot, business is not as good as it is at other times. [828]

Q. Do weather conditions have any effect upon the classification or standardization of your products? A. Yes, I believe it does.



(Testimony of Alfred G. Enoch.)

Q. More favorable weather conditions or unfavorable weather conditions or——

A. Weather conditions will affect the amount we can get in a box. The more we can get in a box without them burning up in a little cooler weather, that is money in a consignment shipper's pocket.

Q. In your experience, have weather conditions in the destination territory in the East required any changes in transit of your particular shipments, or any of your shipments?      A. Yes, they have.

Q. Will you describe under what circumstances?

A. Last year, in February, they had quite an ice and sleet storm through the Cleveland area, Detroit and through there, and it was just for valentine shipping, and we had shipped some out, but we had to reroute them all because the plane couldn't even get in.

Q. And is a facility of which you are a member, such as Bay Area, of prime importance in that consideration?

A. That is one of the important things.

Q. How is your personal attention or knowledge as to the destination or location of your shipments affected in that respect?

A. You mean in the way of tracing them, and things like [829] that?

Q. Yes.

A. That is done exclusively by Bay Area.

Q. By which particular person, if you know?

A. Mr. Barulich.

Q. As executive secretary?

(Testimony of Alfred G. Enoch.)

A. That is right, as executive secretary.

Q. Can you describe briefly for the record the manner in which flowers are prepared for shipment in your place of business?

A. You want to start from the time that we buy them or order them?

Q. Take it right from the beginning.

A. We compile our next day's orders, by telephone, and contact our different fields and order how many flowers we want. And a few we pick up. Mostly we have them delivered. And, since we handle several varieties of flowers and have a very small place of business, if we had them all in there at once we couldn't get in, so we have certain varieties of flowers delivered early in the morning and other varieties come in at ten or eleven, and other ones right after lunch, and we run ours on more of a production line method: like asters, we will pack our complete shipments out, which may be thirty, forty, fifty, sixty boxes of asters. And, depending on weather conditions, we have different sizes of boxes, so if it isn't too hot we use one [830] size box that we can put a thousand asters in, but if weather conditions are hot, and so on and so forth, we use a little smaller box and put in five hundred to six hundred asters.

Q. You are referring to weather conditions in destination territory?

A. Weather conditions back East.

And then, after our packing is all finished, we take our manifests that we have from Bay Area and

(Testimony of Alfred G. Enoch.)

insert the names of the companies and the designated town or break bulk point, because we, ourselves, know through the years which towns we should send to for other towns, and usually we take ours in our own truck to the airport.

Q. I show you some photographs of packing of flowers and ask you if they correctly demonstrate or portray some of the methods of packing flowers for shipment by air carrier.

A. Yes, I would say so.

Mr. Gaudio: We offer these as Respondent's next exhibit in order, as one exhibit for the sake of brevity. Is that the Examiner's preference on that, or would you rather that they be numbered separately? This would be 11.

Examiner Walsh: That will be Exhibit 11-A, B, C, D, E, and F, marked for identification.

Mr. Gaudio: We offer them as Respondent's Exhibit 11.

Examiner Walsh: Any objection?

Mr. Stowell: No objection. [831]

Mr. Wolf: No objection.

Examiner Walsh: Hearing none, they are received.

(The documents above referred to were marked for identification as Bay Area's Exhibit No. 11, and were received in evidence.)

Q. (By Mr. Gaudio): Is it, perchance, this one photograph showing a United Airlines' stewardess amidst a number of boxes of daffodils, the particular United Airlines' plane that you referred to?

(Testimony of Alfred G. Enoch.)

A. No, it was long before that.

Q. Of what type of construction is the large container in which boxes, or other boxes containing flowers are inserted? A. You mean——

Q. I had better state it this way. We have been speaking of so many boxes of flowers per shipment. Of what type construction is the box?

A. For many years, the standard box was usually five foot long, twenty inches wide, and could be eight, nine, ten or eleven or twelve inches high. And then there were quite a few four foot boxes with the same width and depth dimensions, and also three foot boxes. Those are more or less the standard shipping boxes.

Q. And what are they constructed of? What material?

A. Cardboard. They come flat, knocked down, and they are folded together and stapled. Most of them are with the lid and bottom two separate pieces. I believe most of the shippers use a box that will stand 250 pounds weight, normally. That is close [832] to average, I would say.

Q. Does this box, made of cardboard, as you described, have any interior frame construction, or is it just cardboard itself?

A. Just the cardboard itself. There could be some special boxes used with interiors, but we personally do not use any.

Q. Do you purchase these boxes yourself? Is that one of your costs of operation?

(Testimony of Alfred G. Enoch.)

A. That is right.

Q. And it goes into the cost of the merchandise at destination territory?

A. That is right, and the cost depends on the amount you buy.

Q. Does your membership in Bay Area facilitate your purchase of boxes for shipping?

A. I believe that was one of the original things in our bylaws, that when we once were in operation we would go into buying of packing supplies, and such things as that.

Q. Unit buying, in other words, for the members?

A. That is right, wooden cleats, rope and such things as that.

Q. You mentioned some of the purposes of your particular interest in being a member of Bay Area. Can you describe other interests that you have as a shipper and marketer of flowers that are given particular attention by your association, as a [833] member of Bay Area?

A. Yes. One of our troubles, when we were shipping on our own, is that certain times of the year there are space problems, and, for an individual shipper, it gets a little bit hard sometimes to get space when your seasons fluctuate up and down, and you almost have to go to every extreme to get space on the boxes.

I, myself, called the president of American Air Lines at a cocktail party one Saturday night in New York, but I got space on the airplane; but, you

(Testimony of Alfred G. Enoch.)

can't go all the way all the time, so, with a man to take care of it for me now, it has relieved my duties.

Q. Which man are you referring to at this time?

A. The salesman for American Air Lines told me I called Mr. Smith, and was very unhappy about it. That has been four years ago, and I don't remember whether that was who I called, for sure.

Q. Do you find that Mr. Barulich's performance of duties as Executive Secretary satisfies that problem as well?

A. It took almost an hour or more of my time away from me every day, that I do not have to use any more, that I can use on my business.

Q. As a marketer, do you consider flowers a perishable item, Mr. Enoch?

A. Yes, sir, very much so. [834]

Q. Mr. Enoch, you are both a member and director of Consolidated Flower Shipments, Inc.—Bay Area. You have attended numerous meetings of the Board of Directors, have you?

A. Yes, I have.

Q. Have you had, at these meetings, occasion to discuss the various problems that you have mentioned here?

A. Yes. We used to discuss them in our regular meetings until we were into this hearing, and since then we have had no time for it, for other things like that.

Q. As a member and as a shipper, in so far as policy is concerned, do you follow the directions of the Board of Directors and the officers of Bay Area?

(Testimony of Alfred G. Enoch.)

A. Yes, I do.

Q. On these consignment sales, do you share or bear the cost of transportation?

A. I bear all the cost of the transportation.

Q. That is handled on an accounting between you and your purchaser on the cost of the merchandise less 20 per cent commission; is that right?

A. Well, I wouldn't use the term "purchaser." I would say "orderer." And the figure can fluctuate between 15 and 25 per cent.

Q. I see. Is that commission applied only to the cost of flowers, not including the transportation?

A. The commission is taken from the total selling price of [835] the flowers, with freight deducted later.

Q. Supposing a shipment is lost, destroyed or damaged in transit. What do you do?

A. We have a form that we fill out and attach our documents, like a copy of our invoice, and what our consignee has told us the selling price is to the eastern markets at that time, and we give it to Bay Area. Mr. Barulich, as Executive Secretary, processes it for us. And he does his utmost to collect those claims. And, if he does, he takes ten per cent. If he doesn't I only have one alternative. I can start trying to collect it, but otherwise I don't get anything.

Q. It is your loss?           A. It is my loss.

Q. Do you look to Bay Area as a corporation as such to reimburse you or save you from any such loss?           A. No, I don't.

(Testimony of Alfred G. Enoch.)

Q. Have you sustained any such losses in the past?      A. You mean the loss of flowers?

Q. Yes, that have been a complete loss to you out of pocket, without recourse?      A. Oh, yes.

Q. Is that basis of operation and handling of your shipments without recourse in the absence of any responsibility of underlying carriers, direct carriers, in the circumstances, acceptable to you as a shipper? [836]      A. Yes.

Q. I take it your answer to that question implies your continued membership in an organization such as Bay Area; is that correct?

A. That is right.

Mr. Gaudio: You may cross-examine.

Examiner Walsh: Cross-examination, Mr. Wolf?

Mr. Wolf: Thank you.

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Enoch, you mentioned something about getting reports on the weather; is that correct?

A. That is correct.

Q. Do you get it through Bay Area by teletype?

A. No, sir.

Q. Why?

A. I get it from Mr. Barulich, executive secretary.

Q. Does Bay Area have its own teletype system?

A. They get the weather reports. I can't give you the exact name of it, but it is a U. S. Government Weather Bureau report.



(Testimony of Alfred G. Enoch.)

Q. I see. They get it through the airlines?

A. I can't tell you where it is procured.

Q. Do you know whether or not Airborne has its own teletype system? [837]

A. No, I don't know.

Q. Coming to the question of insurance, supposing your flowers are damaged while they are in flight on a carrier. Do you cover them at all with insurance? Is there any insurance that you have in effect?

A. As of now?

Q. In your ordinary course of business.

A. No, I do not carry insurance on my flowers.

Q. Let me give you a specific example. Supposing you send a shipment out through Bay Area, and you want that shipment to go to St. Louis, and, instead, the shipment is sent to, say, Seattle. There is nobody there to receive it, and the flowers are gone. Supposing Bay Area has made out the shipping instructions, and you have lost your flower shipment. The air line, let us assume, has performed its duties of carriage. Would you then endeavor to hold Bay Area responsible for that loss?

A. Do you mean to say that Bay Area made out the shipping bill incorrectly?

Q. Yes.

A. No, because I made out my own manifest.

Q. Assume that Bay Area made out the manifest.

A. They can't. They have no idea what I am shipping, and where, until I give them the manifest.

Q. I see. Supposing the manifest bears the cor-

(Testimony of Alfred G. Enoch.)

rect destination, and Bay Area makes out the next document in order, the [838] air bill, let us say, and puts down the wrong city, as in the example I have given you, and the flowers go to the wrong city, through Bay Area's fault. Would you then hold Bay Area liable?

A. I don't see how it is possible, because the manifest goes with the air bill.

Q. I understand that, but let us assume that this occasion arises——

Examiner Walsh: Presuming that an error was made, Mr. Enoch, and that it was Bay Area's error.

The Witness: I can't see how they could make the error when I have already put it on there and my bill goes with it.

Examiner Walsh: That is not the question. The answer we want from you is, if the error is one committed by Bay Area, what has been your experience in the past, what is your understanding? Is Bay Area liable?

The Witness: If Bay Area makes an error, I have no recourse.

Q. (By Mr. Wolf): If Bay Area makes an error, you have no recourse?

A. No. The Articles and Bylaws state that, sir.

Mr. Wolf: They will speak for themselves.

Thank you, Mr. Enoch.

Mr. Stowell: No questions.

#### Redirect Examination

By Mr. Gaudio: [839]

Q. On that point, Mr. Enoch, regardless of what

(Testimony of Alfred G. Enoch.)

is contained in the Bylaws, if that should ever occur, and if it has occurred, have you or would you look to Bay area to reimburse you for your loss?

A. No.

Q. Would you expect Bay Area to reimburse you, under the circumstances, for your loss?

A. No.

Q. In those circumstances, do you consider Mr. Barulich, if he handled the documents, to have acted as your agent in your behalf?

A. No, he is not responsible for them.

Mr. Gaudio: That is all.

Mr. Wolf: No further questions.

Examiner Walsh: If there are no further questions of Mr. Enoch, you are excused. Thank you.

Mr. Gaudio: I am sorry. Can I ask Mr. Enoch another question at this point?

Mr. Wolf: Yes.

Q. (By Mr. Gaudio): Are you a member, Mr. Enoch, of this organization known as Northern California Consolidators?

A. I have only heard of it from rumor.

Q. You are not a member?

A. I am not a member. [840]

Examiner Walsh: Is there any cross-examination on that question?

Mr. Wolf: No.

(Witness excused.)

Mr. Gaudio: I will call Mr. Bonaccorsi.

Whereupon:

JAMES F. BONACCORSI

was recalled as a witness for and on behalf of Bay Area, and, having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Gaudio:

Q. What is your occupation and address, Mr. Bonaccorsi?

A. My occupation is a wholesale florist and flower grower. The address is 430 Natoma Street. That is our main office and shipping department.

Q. Did you give the name?

A. Golden Gate Wholesale Florist, Inc.

Q. Incidentally, that name has been mentioned in this proceeding recently, and I would like to ask you at this time, before we go into any other examination, is your firm a member of an organization known as Northern California Consolidators?

A. No, it is not a member of such an organization.

Q. Have you ever participated in any discussions in connection with that organization with anyone? [841]

A. Yes. I was a member of Northern California Flower Shippers' Association, which sponsored the Northern California Flower Consolidators, and, being a member of the Shippers' organization, which is primarily a credit organization, decided

(Testimony of James F. Bonaccorsi.)

that in sponsoring this organization that it would go out and seek other members under this name of Northern California Consolidators' Association.

Mr. Wolf: Pardon me. For the record, could we get the correct corporate title? Is it Northern California Flower Consolidators?

The Witness: There are two associations; Northern California Flower Shippers' Association is an association that has been in existence for, I presume, eleven or twelve years. Northern California Flower Consolidators, Inc., is supposed to be a new organization.

My part in that organization, as I was just saying, is that I attended all the pre-gathering of the members, attempting to form this new association. We paid \$40 to Mr. Bowdish. When I say "we," I mean the company—for his services in forming this organization. To my knowledge, this organization is not in existence.

Q. (By Mr. Gaudio): At least, you have never received any notice of any activity, such as meetings of the members, where the offices might be situated, Board of Directors' meetings, who the officers [842] are, or anything else?

A. No; only as I said before, while it was being formed I attended meetings.

Q. Are you aware of the person's identity who was first nominated or elected to the office of President of that group?           A. Yes.

Q. Who was that?           A. Mr. Zappettini.

Q. Mr. William Zappettini, who is one of the

(Testimony of James F. Bonaccorsi.)

Respondents in this proceeding?

A. Yes, that is correct.

Q. Were you with him at the meeting at which he was nominated as such?

A. Yes, nominated and elected, I presume.

Q. Did you have any discussions with Mr. Zappettini after that occasion?

A. Yes, on our way home we discussed that situation.

Q. And what was your and his discussion, that is, so far as your intentions in that connection at that time?

A. Intentions in what way, do you mean?

Q. With respect to membership or activity in this Northern California group.

A. How I felt about it?

Q. What was your discussion with him as to how you and he felt about it? [843]

A. The discussions, of course, were general. I believe, of course, Mr. Zappettini can speak for himself, but the conversation was more or less it appeared that he was really—well, I don't know just what word to use—to keep him in the organization, I should say, they nominated and elected him President, and it was very obvious, at least to us who knew him, that he told me that night that he was going to resign the very next day, which I understand he did, as an officer and acting any part in this proposed association.

Q. Have you ever directed, in so many words, or by the execution of any document, the transmis-

(Testimony of James F. Bonaccorsi.)

sion of any of your flower shipments through this facility known as Northern California Consolidators?

A. To my experience, we did ship through what was supposed to be the Northern California Flower Consolidators. As I said before, it was being formed. Some of the flowers of Golden Gate were put in this consolidation, I presume, but, of course, I am not sure.

Q. I see. Since your conclusion that the organization was not functioning, have you routed any shipments via that facility?

A. To my knowledge, I have never used such a manifest, either. I only used Airborne's manifest during that time that this organization was being formed.

Q. I see. What is the status of your shipments? Are they consignment or straight sales or [844] both? A. They are both.

Q. Have you any way of approximating the percentages one against the other?

A. Yes. We were requested by the Executive Secretary for information that was needed for the records, as to our fiscal year, last year, I should say, and our consignment business was approximately 53 per cent.

Q. You have heard the testimony, I presume, of previous member witnesses of Bay Area that were consignment shippers. Is your basis with your consignees the same?

A. Yes, they are the same.

(Testimony of James F. Bonaccorsi.)

Q. That is, insofar as transportation charges are concerned? A. Yes.

Q. Are you presently a member in good standing of Bay Area? A. Yes.

Q. And an officer or director?

A. A director.

Q. You have paid your dues and assessments as prescribed by the Board of Directors, have you?

A. Yes, I have.

Q. You heard the testimony of Mr. Enoch just given, insofar as the origin and scope of Bay Area and the services afforded to him as a shipper, insofar as marketing flowers in destination [845] territory in the East is concerned?

A. Yes, I have.

Q. Do you subscribe to that testimony insofar as your product is concerned? A. Yes.

Q. In your individual position, have you anything further to add to the testimony as given with particular thought to the straight sales shipments?

A. Well, the primary interest in this Bay Area is it serves more than one purpose. As a grower, we are primarily concerned in marketing our flowers throughout the United States, and have them arrive at the lowest possible cost, so that we can get a fair return for our products and our efforts in growing the flowers. If the rates are high and the flowers don't bring the price that is necessary for us to continue growing, we must then quit growing them, because we can't afford to ship them. That



(Testimony of James F. Bonaccorsi.)

is, the cost of transportation in many cases has been greater, or approximately as high as the cost of flowers that we shipped, and that is a very primary factor in our industry. It is obvious that that naturally would limit the sales of growers in this area.

Q. Take those straight sales shipments, for example, and let us assume a situation such as Mr. Wolf has suggested, that in handling such a shipment, through some clerical error by the Executive Secretary of Bay Area, or any Bay Area personnel, that [846] shipment is lost or destroyed, never received by your consignee. What do you do?

A. There is not much we can do. The responsibility is mine, in other words. We can't go to Bay Area or to Mr. Barulich or the consignee for reimbursement of that shipment.

Q. You consider it your own loss, uncompensable so far as Bay Area is concerned?

A. That is correct.

Q. Have you sustained any such losses in the past?      A. I should say so.

Q. Have you ever had an opportunity or taken the time to compare the differential that might exist in the cost of transportation to you as a consignment shipper per box prior to Bay Area or using any other facilities than Bay Area's and as compared with the cost of the box, using your facilities available through Bay Area?

Mr. Wolf: Mr. Examiner, the usual objection;

(Testimony of James F. Bonaccorsi.)

unless related in point of time, the comparison doesn't mean much.

Examiner Walsh: Can you indicate a common period?

Mr. Gaudio: Yes.

Q. (By Mr. Gaudio): Let us take a representative period, Mr. Bonaccorsi, prior to your membership in Bay Area, according to your then experience, and your experience subsequent to your participation in the Bay Area program. [847]

A. The comparison between the shipments that were made prior to our being a member of Bay Area and during—right after becoming a member of Bay Area; is that your question?

Q. Yes.

A. Well, we definitely have effected savings, to the amount of at least from \$1.50 to \$2.00 per box, and, at that particular time, I would like to add, we made a thorough check to make sure that we were doing what was right, and so forth, that we were on the right track.

Q. Does that amount of margin in the cost of transportation determine or have any determining factor in showing a profit and loss on that particular consigned sale?

A. In many cases, that is the profit.

Q. Per box? A. Correct.

Q. Can you tell us how many boxes you might ship in a given period of time? Have you ever made a survey to determine how many boxes you have shipped in the last fiscal year?

(Testimony of James F. Bonaccorsi.)

A. No, I have not made any survey as to how many boxes I have shipped.

Q. Would you say it is a substantial sum?

A. I would say so, yes.

Q. How often do you ship by air?

A. I would say that we ship by air in some volume or other every day except Sunday. [848]

Q. Can you approximate the average number of boxes per shipment?

A. I might put it this way: Being a grower, our volume fluctuates according to our crops. We have more or less a steady flow every day, but when we come in with a crop, a certain flower at a certain season, our volume increases. I would say that we have had days when shipments ran in excess of 100 boxes.

Q. That might mean a difference of \$150 to you in one day?

A. That is correct.

Q. As a grower of flowers, are you particularly interested in the available production of flowers by growers in the eastern markets?

A. Flowers from the East coming to San Francisco?

Q. No, flowers, from eastern markets, serving your destination territory.

A. I am sorry. I don't quite get your question.

Q. As a grower of flowers, are you particularly interested in the condition of the growers' markets in the East?

A. Of course.

Q. You compete directly with them, do you?

A. At some times of the year, yes.

(Testimony of James F. Bonaccorsi.)

Q. Depending on the nature of the crop?

A. That is correct, the type of flower. [849]

Q. You heard from Mr. Nuckton's testimony regarding the available market conditions in the East as affected by weather conditions, did you not?

A. That is true.

Q. And you have found, from your experience, that to be a potent factor regarding your shipments via Bay Area?      A. Definitely so.

Q. Will you state what single factor, apart from the question of cost, you, as a shipper-grower, find of particular benefit to you as a member of Bay Area?

A. It is more than just one phase of this membership here. I mean, we are at present enjoying consolidation rates as a grower. We have this information as to weather conditions throughout the country, and we have the handling of the claims through our Executive Secretary's office and Executive Secretary. We hope, in the near future, as time permits, to increase the benefits for the members, as was mentioned previously by Mr. Enoch, I believe.

Q. In other words, the organization of Bay Area, its primary mission, is something more than merely handling flowers for shipment by air carrier?      A. Definitely.

Q. As a member, do you subscribe to the directives of the officers as may be resolved by the Board of Directors of Bay Area, and abide by their rulings and considerations? [850]      A. I do.

Q. As a grower, Mr. Bonaccorsi, have you ever

(Testimony of James F. Bonaccorsi.)

made any inquiry into the subject of crop protection engineering? Does that mean anything to you?

A. Well, it means a lot to us, and to the members. We are at present engaged, and have for the past, I should say, two months, practically, engaged in what we call crop protection engineering.

Q. And, generally speaking, how does that serve you as a grower?

A. Naturally, as a grower, it would help to prevent freezing of crops during a period of the year when this area is susceptible to the weather elements.

Q. In other words, that is with particular reference to a problem in this area?

A. That is correct. It is actually, I might add, the first step in that direction in this area.

Q. Are you a member of Northern California Shippers' Association?

A. I am no longer a member.

Q. Were you a member?           A. Yes, I was.

Q. How many members do you know, or, at least, how many members are there in that association, to the best of your knowledge and belief? [851]

A. When I left the Northern California Flower Shippers' Association, there were nine members.

Q. How many?           A. Nine.

Q. Are there other flower growers or shippers' organizations than have already been mentioned in this hearing? Are there others?

A. Other associations?

(Testimony of James F. Bonaccorsi.)

Q. Yes. A. Of course, a number of them.

Q. And their membership consists of either nurseries, wholesalers of flowers, retailers of flowers?

A. That is right.

Q. From your experience, are all such industries or individuals, businesses, prospective shippers of air freight?

A. Are they all prospective shippers? Of course; anyone that grows flowers is a prospective shipper of air freight.

Q. Prior to the advent and the use by you of air carrier service for flowers, did you have a market in the East? A. For the flowers we grew?

Q. Yes. A. Well, yes, but it was limited.

Q. How did it move at that time?

A. Most of it by rail.

Q. By specialized cars? [852]

A. Railway reefer cars.

Examiner Walsh: Reefer?

The Witness: Reefer, or refrigerator, I should say, but the term they use is "reefer."

A. (By Mr. Gaudio): In your opinion, with respect to these other members or shippers or nurseries, do you know whether they ship by rail at the present time?

A. I believe a number of them still do.

Q. So that there are other shippers in this area of flowers which are, to your knowledge, not members of Bay Area; is that correct?

Item 1.

A. That is correct.

(Testimony of James F. Bonaccorsi.)

Q. Nor, as far as you can recall, have any activity in Northern California Flower Shippers' Association; is that correct?

Item 2.

A. That is correct.

Q. Or in Northern California Consolidators; is that correct?

Item 3.

A. That is correct.

Mr. Wolf: Mr. Examiner, there was no testimony as to the last named. [853]

Mr. Gaudio: I will withdraw that. I am sorry.

Mr. Wolf: The names are mixed up.

Q. (By Mr. Gaudio): And all of them are prospective shippers by any available shipper that might be out of this as origin territory?

A. That is correct.

Q. So, as a member and director of Bay Area of some twenty-five members in this area, do you consider that to be any substantial portion of the available shippers in this area?

A. No, a very small portion, I would say.

Q. Did you ever have any conversations with Mr. McPherson, the Complainant here, regarding his proffer of service during that period when Bay Area was non-existent, that is, was not actually functioning?

A. I think you will have to rephrase that question.

Q. Have you ever had any conversation with Mr.

(Testimony of James F. Bonaccorsi.)

McPherson regarding what he might offer you as a shipper in handling your flowers?

A. What he would offer me as a shipper of flowers?

Q. Yes; what type of service, or what particular benefits might be offered you?

Examiner Walsh: I think he indicated in his original examination, during the period when Mr. Reynolds had withdrawn his service. Is that correct?

Mr. Gaudio: That is right. [854]

The Witness: All I know is that California Flower Consolidators, which is a subsidiary of Airborne—that is what was offered to me while this association was being formed, this California Flower Consolidators.

Q. (By Mr. Gaudio): Did he make any indication to you at that time as to whether you would be limited in any respect regarding the shipments to be handled by them?

A. No. At that time, I believe at one of the meetings, the entire volume of flowers from the members would be consolidated, and that the consignee would receive the consolidated rate.

Q. And as to individual component parts of that shipment on the consolidated basis, what particular benefit would they share?

A. Well, I didn't know that until the very last meeting. In fact, two meetings, the one that was held in Airborne's offices, I questioned a single lot shipment to a three lot shipment. I then discovered



(Testimony of James F. Bonaccorsi.)

that a single lot shipment was penalized because it was under 100 pounds, I believe two cents per pound.

Q. You mean that a different statement had been made to you before?

A. Let us say I had been led to believe that the consignees, whether it was one box, five boxes or ten boxes, would get the consolidated rate. [855]

Q. Would get the benefit of the consolidated rate for his component part of the shipment?

A. Correct, whether the component part might be one or two boxes.

Q. And, with that understanding, you went to the meetings and learned that it was not so; is that correct?

A. Yes. As I said, the last meeting that I attended.

Q. Did you mention Mr. McPherson's mentioning anything to you about joint loading?

A. No. That came up at another meeting. I think this was held at United Airlines Conference Room. That was prior to this one we are just discussing. In fact, that is the meeting that Mr. Zappettini left that night and he wanted to resign.

I directed a question to Mr. McPherson, if he would allow the members of this association—if it were joint loaded with McLellan's flowers, which we knew there was such an arrangement—would the members get the same consolidated rate as McLellan would?

Q. What was his reply?

A. His reply was "No" at that meeting.

(Testimony of James F. Bonaccorsi.)

Q. And when you say the members of the association, are you referring to the association that was then contemplated to be formed?

A. Being formed, that is correct.

Q. Is Mr. McLellan, whoever he might be, [856] a competitor of yours?

Mr. Wolf: Mr. Examiner, I don't know anything about Mr. McLellan, or whether he is a competitor of Mr. Bonaccorsi's, but if this examination is in any way endeavoring to show any tariff violations on the part of Airborne, I will continue to object to these various questions. I see no purpose in this examination so far as the issues in this case are concerned.

Mr. Gaudio: Mr. McPherson and Mr. Wolf have tried to develop here that my people have become in some way complicated with a fictitious organization—certainly fictitious on Mr. McPherson's own statement, when he says that though the letterhead was "California Consolidators," it wasn't in fact incorporated, with the documents so labeled in the hands of many people. That is certainly misleading, if nothing more. Why he has injected that into this record, I don't know; or why he has injected the association of my people with that organization into this record, I don't know; but, I think we are entitled to explain how it came about, on whose representations, and whether those representations were sincere or not.

Mr. Wolfe: At this time, Mr. Examiner, we are talking about a Mr. McLellan, whose name for the

(Testimony of James F. Bonaccorsi.)

first time appears in this record for any particular purpose. What he has to do with why these people became associated or disassociated with Northern California Flower Consolidators, I don't know.

The Witness: Can I—— [857]

Mr. Wolfe: Just a minute. I have an objection.

Examiner Walsh: I will allow the witness to answer.

The Witness: In answer to your question——

Mr. Wolfe: I haven't asked a question.

The Witness: Then I will ask this question. In answer to Mr. Wolfe's question, which I direct to you, it has a vital importance in this industry, the floral industry—vital.

Examiner Walsh: I will let your Counsel take care of that, Mr. Bonaccorsi.

Q. (By Mr. Gaudio): In other words, Mr. Bonaccorsi, it was of particular importance to you to know whether or not you, as a smaller shipper, would be afforded the same rates and privileges which this man McLellan that you refer to was receiving, according to your knowledge?

A. Of course. I could see that if this volume of this proposed group, or this group that was functioning, if their volume of flowers was added and joint loaded with McLellan, a large shipper, he would land his flowers at a cheaper rate at the expense of the association members. The flowers would be landed cheaper, and he would have the advantage over all of us; and, for that reason alone, I objected. He would have an advantage over us.

(Testimony of James F. Bonaccorsi.)

Q. The joint loading of your composite shipments with his would, in effect, give him an over-write on the sale of the [858] merchandise?

A. Correct. As I previously stated, McPherson had said, "Yes, your members will enjoy the same consolidated rate that applies in the consolidation of the joint load rate," and then I could see we all would be equally the same.

Q. Have I developed with you, Mr. Bonaccorsi, the disposition of loss and damage to your flowers on a straight sale? Have you explained that?

A. Have I explained——

Q. The disposition as between you and Bay Area.

A. In the event of a loss?

Q. A loss or damage to a straight sale shipment.

A. I think we covered that.

Q. I know I did on a consignment basis.

A. And not on straight. On the straight shipments, the same applies as on consignment.

Mr. Gaudio: I think you may cross-examine.

Mr. Wolfe: Thank you.

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Bonaccorsi, coming back to these meetings of Northern California Consolidators, you testified that you remember a first meeting where Mr. Zappettini was elected President. You remember that?

A. That is correct. [859]

Q. Now, you have also testified, I think, that you

(Testimony of James F. Bonaccorsi.)

remembered a second meeting at the United Airlines Conference Room?      A. That is correct.

Q. How many people were there? How many florists were there?

A. At the conference room?

Q. At the United Airlines Conference Room.

A. That is the first one, then.

Q. Whichever one it was.

A. Well, I would take a guess of twenty-five or so, somewhere in that neighborhood.

Q. Do you remember the date?

A. No, I don't.

Q. Would you say that July 12, 1950, was too far off?

A. I couldn't say one way or another.

Q. Do you recall that a contract was entered into between Northern California Flower Consolidators, Inc., and California Consolidators, a division of Airborne?

A. I know that a contract was tendered by Airborne Company, that is correct, subject to the approval of the members.

Q. You don't know whether that was executed?

A. No, I didn't even know that the company was in existence. I know that we were being formed, as I previously testified. [860]

Q. But you knew that you had a president, didn't you, Mr. Bonaccorsi?

A. President, yes, but that doesn't mean that we had a company. To my knowledge, we never had a

(Testimony of James F. Bonaccorsi.)

company. You can elect officers before you have your company.

Q. How about the directors?

A. I think I got into that, too. I think they were trying to get me on that. I believe I was a director. Yes, now that you ask that question, that is true.

Q. That is what I thought.

A. But that is all.

Mr. Gaudio: Is that all, Mr. Wolf?

Mr. Wolf: No, he said that is all. I didn't say that.

Mr. Gaudio: I am sorry.

Q. (By Mr. Wolf): You testified you have resigned from Northern California Consolidators, Inc.?

A. No, I never resigned.

Q. You haven't resigned? A. No.

Q. Are you still a member? If you haven't resigned, you are still a member; is that correct?

A. How can I be a member of something that never existed?

Mr. Gaudio: He is arguing with the witness. He has denied that there ever was an association. [861]

Mr. Wolfe: He has never resigned.

Mr. Gaudio: He never had to resign.

Examiner Walsh: Let's proceed, Gentlemen, and I suggest you conduct the examination in a less argumentative fashion, Mr. Wolf.

Mr. Wolf: Very well, Mr. Examiner.

Examiner Walsh: Did you have something to say, Mr. Gaudio?

Mr. Gaudio: Only when Mr. Wolf is through.

(Testimony of James F. Bonaccorsi.)

Examiner Walsh: You can state what your impression is of the corporation, whether it is in existence, whether you are still a member or not, but just give the facts.

Q. (By Mr. Wolf): You have not resigned as a member? A. No, I have not.

Q. You have testified that the number of shippers in the Bay Area who are members of the Bay Area organization is a very small portion of the total flower shippers in this area?

A. That is correct, in my opinion.

Q. How many flower shippers are there in the area?

A. Well, I have never taken an actual count of how many there are, but there are all types of shippers. I mean, there are pot-plant shippers, fern grower shippers, cut flower shippers, growers that grow certain flowers that are shipped during their seasons. I would say 100 or more in this area, or maybe even 150. I don't say they ship all year around, but they are [862] shippers.

Q. Mr. Bonaccorsi, as a matter of fact, don't you know that there are about seventy or seventy-five shippers of flowers in this area?

Mr. Gaudio: By all forms of transportation, via all services?

Mr. Wolf: All services.

The Witness: That is news to me.

May I correct something here? I made a statement that I did not resign as a member. After thinking about it, I was never a member, because

(Testimony of James F. Bonaccorsi.)

I never paid any dues. I had never been billed for anything, so how could I resign from something I didn't belong to?

Examiner Walsh: Suppose you make a statement to that effect.

Mr. Gaudio: Do you wish to explain your former answer to one of Mr. Wolf's questions regarding your present membership or status in this Northern California Flower Consolidators?

The Witness: Yes.

Mr. Gaudio: What is that?

The Witness: I could not resign. I never paid any dues to the association. I never was billed for anything; so, therefore, in my own mind, I never belonged, and since I never belonged I could not resign.

Mr. Gaudio: You have never found any need, in your [863] understanding of the situation, to tender any resignation?

The Witness: Evidently not.

Examiner Walsh: I think that is sufficiently clear now. I don't want to interrupt Mr. Wolf's cross-examination too much.

Proceed, Mr. Wolf.

Q. (By Mr. Wolf): Have you ever resigned as a director? A. No.

Q. So far as you know, you are still a director?

A. As far as I know, yes.

Q. You ship flowers daily, don't you, Mr. Bonaccorsi? A. Except Sundays and holidays.



(Testimony of James F. Bonaccorsi.)

Q. As a matter of fact, don't you ship by Airborne almost daily?

A. I will say that Airborne receives one or more boxes at some time or other during the week, yes.

Q. I see. When you say some time or other, how many of these days during the week?

A. There are days that Airborne doesn't get any, and there are days when Airborne may get six or seven, and some days one or two.

Q. I see. Do you know if those shipments are consolidated?

A. As far as I am concerned, they are not consolidated.

Q. You don't know?

A. As far as I know, they are forwarded on Airborne's [864] tariff. I have received nothing to show that they have been consolidated or are consolidated.

Q. I see. Have you ever looked at the tariff rates and compared them with the consolidated tariff rates to make sure?

A. Any particular time?

Q. Last night, say.           A. No, I did not.

Q. As a matter of fact, don't you know that your flowers, in many instances, go out on a consolidation, that is, on the Northern California Flower Consolidation?           A. Why keep it a secret?

Q. I say, do you know that?

A. I say no, why keep it a secret?

Q. You don't know?

A. No, I don't. I am sorry.

(Testimony of James F. Bonaccorsi.)

Q. You have talked about the Bay Area and its services, Mr. Bonaccorsi. You have also described to us the fact that you originally participated with Northern California Flower Consolidators. Your purpose in participating in the second organization was to see if you could ship flowers cheaper, was it not? A. Not necessarily.

Examiner Walsh: Would you explain?

The Witness: Gladly. Northern California Flower Shippers Association sponsored—of which I was a member—Northern California Flower Consolidators. As a member, I naturally was [865] invited to attend whatever meetings were held for this new proposed association.

At that particular time, Bay Area did not have agents throughout the country, as it has today, and in some cities Airborne had practically the exclusive service. It appeared to me at that time perhaps I should go along and see that we could ship our flowers through Airborne under this new proposed association, and that would give me a better coverage for my operation of distribution of flowers throughout the United States.

Q. (By Mr. Wolf): Is this a fair question, Mr. Bonaccorsi, that you would join any association of shippers where you could get better rates or better coverage?

A. No, definitely not, not any, no.

Q. You would join pretty nearly any?

A. No.

(Testimony of James F. Bonaccorsi.)

Q. You mentioned something about a differential in rates on one box or three boxes?

A. That is correct.

Q. Do you recall that Mr. McPherson explained that the reason for this change in rates was for the benefit of all the members, and that all the members were present and agreed that the change should be made?

Mr. Gaudio: Just a moment, Mr. Bonaccorsi, before you answer. [866]

If you don't establish a foundation as to which members, considering the various organizations that have been mentioned I object.

Examiner Walsh: I assume he is referring to Northern California Flower Consolidators.

Mr. Wolf: Members of Northern California Flower Consolidators, that is right.

The Witness: Are you referring to the first shipment or the second shipment?

Q. (By Mr. Wolf): Maybe I can bring back your thoughts a little bit. We were talking somewhere along the line about a differential of two cents.

A. Yes, I know what you are talking about now.

Q. Now, that was discussed by Mr. McPherson, and they all agreed?

A. After he had put it in practice, not before.

Q. But it was for the benefit of all the members?

Mr. Gaudio: Do you mean to the prejudice or to the additional cost of all the members, Mr. Wolf?

(Testimony of James F. Bonaccorsi.)

How can an additional assessment redound in a benefit?

Mr. Wolf: Excuse me.

Examiner Walsh: I think the statement he made about those particular charges might require a little more detailed explanation, so that we might have a full understanding with respect to [867] what those charges actually were, the mechanics of it.

Q. (By Mr. Wolf): You mentioned two cents. Could you explain what that was?

A. Well, I objected against it, but, since it had been in operation, my objection would be of no value, so I did not object at the meeting. The two cents was if a one-box shipper sent a shipment, compared to a three-box shipment which weighed 100 pounds or more, it appeared that some of the members, or maybe Mr. McPherson, decided that the one-box shipper should pay a penalty of two cents.

Q. Mr. Bonaccorsi, go ahead and give us a little more explanation of that. I don't understand the mechanics of it.

A. Well, personally, I didn't understand it myself, either. All I know is that I was told that a box, one shipment, would be assessed two cents a pound, or two boxes under a hundred pounds would be assessed two cents per pound of the consolidation rate.

That is what I was told it was going to be at that particular meeting.

Q. Don't you recall, Mr. Bonaccorsi, that actually the two cents was a reduction on the larger

(Testimony of James F. Bonaccorsi.)

shipments, and that there was no increase on the smaller shipments? Now, think a little.

A. This organization that was being formed was to [868] consolidate the flowers and that the consignees were to receive the consolidated rate, whether it be one box, two boxes or ten boxes. I see no bearing. That has no bearing whatsoever.

Mr. Wolf: All right. That is all. Thank you, Mr. Bonaccorsi.

Mr. Stowell: I have some questions.

Examiner Walsh: Mr. Stowell.

Q. (By Mr. Stowell): Mr. Bonaccorsi, it was your testimony that you joined Bay Area in order to secure transportation rates which were lower than what you were paying via existing air indirect or direct carriers? A. That is right.

Q. How did you know what you were paying for your existing transportation air services prior to joining Bay Area?

A. The airlines have a published tariff. That was one which I received. Airborne had his tariffs, which were given to me.

Q. Did you ever examine the Airborne documents at the time to determine what the extent of your payment of air transportation charges was or would be at the time? A. Yes.

Q. What type of documents other than the tariffs did you examine to know what you were actually paying out of pocket for such services? [869]

A. On the consignment shipments, I would receive the returns from the wholesale commission

(Testimony of James F. Bonaccorsi.)

house on the eastern markets. Then, I would know exactly what I had paid.

Q. Any other documents? A. No.

Q. When you joined Bay Area, did you discontinue shipping via Airborne?

A. When I joined Bay Area, 75 per cent, I would say as a guess, of my business was diverted from Airborne to Bay Area.

Q. Have you compared your transportation expense for Bay Area shipments as against similar shipments going to the same points by Airborne?

A. I have. At the beginning of my joining Bay Area, we had many comparisons.

Q. What conclusion did you come to?

A. As I previously stated, earlier in my testimony, \$1.50 to \$2.00 per box.

Q. You continued shipping via Airborne for how long?

A. Perhaps I should clarify a point. The shipments that are going through Airborne are shipments where most of them require Airborne's service because they want what they refer to as excess valuation. These shipments—the consignees request that.

Q. What proportion of Airborne's shipments would you say are the result of consignees' requests? A. One per cent. [870]

Q. Now, you still continue to ship via Airborne, at the present time?

A. As I stated earlier, yes.

Q. Have you ever compared the reports from

(Testimony of James F. Bonaccorsi.)

consignees, which you just mentioned a moment ago respecting Airborne's shipments, with reports from consignees respecting Bay Area's shipments?

A. The only way I can answer that is that, first, Airborne on consignment shipments has only received shipments where Bay Area did not serve, as I previously stated. There was no need for me to make any comparison at that particular time.

Q. But you undoubtedly have made some comparisons?

A. In the same city; in other words, before I joined Bay Area, and after that transition, that was the time that we actually made a study of it.

Q. Mr. Bonaccorsi, is it your testimony that at the present time when you use the service of Airborne you never forward a shipment via that service into the same point which is served by Air Area?

A. I wouldn't say. There may be some shipments.

Q. There may be occasions when you use Airborne as a carrier to deliver your boxes to a point which Bay Area serves; is that correct?

A. That is possible.

Q. In fact, it is probably very frequent that that happens? [871]

A. Not frequently.

Q. Well, it happens on occasion?

A. All right.

Q. Have you ever compared the transportation expense, your out-of-pocket transportation expense, when you examined those consignee reports respect-

(Testimony of James F. Bonaccorsi.)

ing the shipments via Bay Area and those via Airborne going to the same destination?

A. I don't have anything going to the same points.

Q. Mr. Bonaccorsi, you have just told me that on occasion you do ship——

A. But that is a straight shipment, not consignment. You just asked if I shipped, via Airborne, to the same places where I ship via Bay Area. But, when that condition exists, one is a consignment shipment and one is a straight sale. In the outright sale, I never got to know what the consignee pays, only perhaps when there is a claim; that is, maybe, the only time, and there is no need for me to compare.

Q. And your testimony is that you never had occasion to compare your out-of-pocket transportation expenses, as you have noted them, on these consignees' reports for Airborne shipments and Bay Area shipments, even when they don't go to the same cities? You have never had any occasion to compare the amounts for air transportation?

A. You will have to be more specific. I am getting confused here between straight shipments and consignment shipments [872] going via Bay Area, going via Airborne, and so forth.

Q. In joining Bay Area, you were perfectly aware that when you joined Bay Area you received a saving from Bay Area in your out-of-pocket expenses on consignment shipments?

A. Correct.



(Testimony of James F. Bonaccorsi.)

Q. But, however, you stopped making such comparisons as long as you continued using Airborne at the present time, and after your joining Bay Area. Is that the impression you want to leave?

Mr. Gaudio: It has me confused now. I can't follow the question, Mr. Stowell.

Mr. Stowell: Let's start over again.

Examiner Walsh: Let's take a recess.

(Short recess taken.)

Examiner Walsh: Come to order, Gentlemen.

Mr. Stowell: Mr. Examiner, I have decided to conclude my examination of this witness.

Examiner Walsh: Do you have any redirect, Mr. Gaudio?

Mr. Gaudio: I would just like to ask Mr. Bonaccorsi one further question.

#### Redirect Examination

By Mr. Gaudio:

Q. Mr. Bonaccorsi, do you consider yourself qualified in any way to satisfactorily read tariffs and tariff publications and the like? [873]

A. I do.

Mr. Gaudio: That is all.

Mr. Wolf: May I ask one question, Mr. Examiner?

Examiner Walsh: Yes, Mr. Wolf.

#### Recross-Examination

By Mr. Wolf:

Q. Mr. Bonaccorsi, will you take a look at Air-

(Testimony of James F. Bonaccorsi.)

borne's Exhibit No. 4, which is the eighth copy batch of airbills.       A. I am now looking at it.

Q. Will you take the copy marked No. 7, which is a white copy. On the bottom it says, "Shipper's copy." Do you receive those for your air bill shipments?

A. Lately we have been receiving them.

Q. You have been?       A. Lately.

Q. About once a week they are delivered to you, aren't they?

A. When they are delivered I do not know.

Q. There are spaces here setting forth the description of the property, number of pieces, the weight, dimensional weight, air rate, whether it is prepaid or collect, and various other items. Do you ever examine the figures or words that are filled in, if they are filled in?

A. I have commenced examining them this last week, yes.

Q. So, if you do examine them, you could [874] compute from that how much the transportation charge on your shipment is, couldn't you?

A. I could, yes.

Mr. Wolf: That is all. Thank you.

Examiner Walsh: Mr. Gaudio, do you have any further questions?

#### Further Redirect Examination

By Mr. Gaudio:

Q. Mr. Bonaccorsi, is that shipper's copy, which

(Testimony of James F. Bonaccorsi.)

Mr. Wolf just questioned you on, given you at the time the shipment is tendered by you for delivery or mailed to you at a later date, or what?

A. It is not given to us at the time we tender shipments. We use the other form that was put in here for an exhibit. I don't remember the number.

Q. Have you examined those documents, as you say, within the last week, since you have commenced receiving them, to determine whether all of the charges ultimately assessed to your account, including pick-up, consolidation charges, and delivery charges, are reflected thereon?

A. Yes, on the one that I receive.

Q. Now, before this period when you have been receiving these documents—or have you been receiving these documents in the past?

A. I would like to put it this way. When I first commenced [875] shipping, I requested such documents, and I did not receive them for quite some time, so, therefore, I could not make any comparisons. I also checked with Airborne about them, after I checked in my office, and found, well, we haven't got this one, and we haven't got these, and so forth. My file has been incomplete.

Does that answer your question?

Q. Yes. Have you ever learned that the total charge as indicated on the shipper's copy of Airborne's freight bill is different from the total charge as reported by your purchaser?

A. Whenever I was able to make a comparison,

(Testimony of James F. Bonaccorsi.)

I would say yes. In some instances, yes, I have found it different.

Mr. Gaudio: No further questions.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: One question.

#### Further Recross-Examination

By Mr. Wolf:

Q. Mr. Bonaccorsi, the difference that you mentioned in charges was when you received your statement from your consignee; is that correct?

A. From the consignee in this case, let's say, yes.

Q. The amounts set forth on these air bills show all charges up to the point of landing at the airport city, do they not?

A. I believe they do, yes; some of them do. [876]

Q. So the difference in charge would be the delivery charge, the local delivery charge from the airport city to the ultimate consignee, wouldn't it?

A. It could be, yes.

Q. One further incidental question. Do you carry insurance on your flowers?

A. At present I don't. The only insurance I carry are the shipments—I should say, not insurance, but excess valuation through Airborne's facilities.

Mr. Wolf: Thank you. No further questions.

Examiner Walsh: You may be excused. Thank you.

(Witness excused.)

Mr. Gaudio: I would like to call Mr. Nuckton.  
Whereupon:

JOHN NUCKTON

recalled as a witness for and on behalf of Bay Area, having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Gaudio:

Q. Mr. Nuckton, I believe you already stated that you are presently the President of Consolidated Flower Shipments, Inc.—Bay Area?

A. Yes, sir.

Q. And, as such, do you preside at the meetings of the [877] Board of Directors?

A. That is right.

Q. And have you so presided in the past during your term of office? A. Yes.

Q. And at these meetings of the Board of Directors have various questions of policy and operation of Bay Area in its over-all service to the members been discussed in various phases? A. Yes.

Q. Whatever might be the determination of the Board of Directors, that has been passed on to the members by the Office of the Executive Secretary?

A. That is right.

Q. Has that been pursuant to the direction of the members and the officers of Bay Area?

A. Yes.

Q. You, as an individual member, in other words, then, subscribe to and adopt whatever pro-

(Testimony of John Nuckton.)

cedures and matters of policy are determined by the Board of Directors?      A. That is right.

Q. And as a shipper, you abide by that policy?

A. Yes.

Q. Incidentally, you have the John Nuckton Company, an individual proprietorship; is that correct?      A. Yes. [878]

Q. This John Nuckton, Inc., of Palo Alto, is that a wholly owned stock ownership?

A. It is. I do business under three different names, for the simple reason that I have a manager in each business who works for part of the profits, and, therefore, I have to keep three different sets of accounts. My shipping business now is John Nuckton, Inc.

Q. John Nuckton, Inc. And that is 100 per cent stock ownership in yourself?

A. 100 per cent.

Q. You have direct control and ownership of the management of that company; is that right?

Q. Have you in the past had occasion to use Airborne's service?      A. I have.

Q. During what period of time was that?

A. That was during the period that Bay Area didn't operate for lack of trucking facilities, at the end.

Q. You are referring to the trucking facilities here under Mr. Reynolds?      A. Yes.

Q. And for how long a period did that continue?

A. Well, I shipped through Airborne for a matter of only a couple of weeks, because I was off crop

(Testimony of John Nuckton.)

at the time. Most of that period I was off [879] crop.

Q. After the difficulty was removed by the reorganization, as has been discussed here, between the members and the Board of Directors and Mr. Barulich as Executive Secretary, on the one hand, and the Airport Drayage on the other hand, it made the service again available through Bay Area; did you then resume your routing through Bay Area?

A. Yes.

Q. From your experience, have you found the cost of your transportation via Bay Area and Airborne to be different?

A. I didn't compare that particular period, but another period.

Q. What period was that?

A. This was a period in June of 1951. At that time we had difficulty in Pittsburgh because our flowers, although they were moved in Pittsburgh by the same trucking outfit that moved Airborne's flowers, were delivered late afternoon, while Airborne's shipments were delivered early in the morning. As a result, our consignee complained, and told us to use Airborne.

Q. Now, you, as a member and as an officer of Bay Area, do you take part in the determinations as to the establishment of satisfactory delivery service in destination territory?

A. Yes. We don't go into particulars, but we discuss it in general.

Q. And if any change in policy is determined in

(Testimony of John Nuckton.)

that respect, how do you put those changes into effect, through what [880] office?

A. We instruct the Executive Secretary to take the necessary steps.

Q. And then he makes a survey and investigation, or an adjustment, and reports to the Board of Directors as to its acceptability?

A. That is right.

Q. Was that done in this case in Pittsburgh?

A. Yes.

Q. And, subsequent to that, has the delivery service in Pittsburgh been resumed, in not only your individual behalf, but for Bay Area, satisfactorily?

A. Yes, it has been satisfactory since then.

Q. Do you find that that is a medium of control which is not available to you in Airborne's service?

A. I didn't quite get that.

Q. Let's put it this way. Would your opportunity to determine the establishment of a satisfactory delivery service in destination territory be available through Airborne?

A. Well, there would be a means of transportation available through Airborne.

Q. But would you have the same facility and opportunity of controlling the delivering service in destination territory through Airborne that you exercise through Bay Area?

A. No; I would abide by whatever they [881] decided.

Mr. Wolf: I didn't hear that answer.



(Testimony of John Nuckton.)

Examiner Walsh: He said he would abide by whatever they decided, meaning Airborne.

Q. (By Mr. Gaudio): Were you in the hearing room when both Mr. Enoch and Mr. Bonaccorsi testified regarding the purposes and services made available to the members through Bay Area?

A. Yes.

Q. Do you find those services of particular moment and benefit in your business?

A. Yes.

Q. What particular flowers are you interested in?

A. We ship all the year. We ship heather and acacia most months in the winter, and in the spring iris. Then we go to asters, then chrysanthemums and pom-poms.

Q. Are you a grower or wholesaler, or both?

A. I am a grower as well as a wholesaler and shipper.

Q. Were you ever invited to membership in an organization known as the Northern California Consolidators?

A. No, I wasn't invited, but I tried to get in at one time.

Q. Did you have any conversations with Mr. McPherson regarding membership?

A. Yes, I approached Mr. McPherson on that, and he proposed my name in a meeting, but it was turned down because at [882] that time they wanted only bona fide established shippers in the organization, and not mere growers.

Q. Did you consider yourself to be a shipper of flowers at that time?

(Testimony of John Nuckton.)

A. I was only a grower at the time.

Q. Were you shipping your products?

A. Oh, yes, I was shipping my own products.

Q. So, you have never participated as a member in this so-called Northern California Consolidators?

A. No, sir.

Q. So any testimony in this proceeding alluding membership in you is incorrect; is that right?

A. That is right.

Q. Incidentally, what are your shipments, consignment or straight sales?

A. They are at least 95 per cent consignment.

Q. And the testimony given by Mr. Enoch on the handling of consignment sales regarding the transportation charges is the same in your case?

A. That is the same.

Q. In other words, you assume the transportation charges?      A. That is right.

Q. Do you find that the transportation cost is a primary factor in determining your available market in the East at destination territory? [883]

A. Yes, sir, very important. I have compared the proportion of the freight costs on the part of the carriers on a number of shipments, as against the part we get. It was over part of the month of January. We received 39 per cent of the proceeds of the flowers after commission in the East, while the carriers received 61 per cent. So it is of considerable importance.

Q. Have you made a special study of your par-

(Testimony of John Nuckton.)

ticular waybills and shipping documents to arrive at that prorating?

A. I took the figures from the consignment reports.

Q. As a member of Bay Area, that is, as a shipper of flowers, do you find that you can affect substantial savings in transportation costs? Has your experience proven that?

A. Yes. My experience during the three weeks I shipped to Pittsburgh by Airborne.

Mr. Gaudio: You may cross-examine.

Examiner Walsh: Cross-examination, Mr. Wolf?

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Nuckton, the percentage of gross proceeds that you receive at any given time, taking out your transportation charge, of course, depends on the market for flowers, does it not? A. Yes.

Q. In other words, whereas you testified in January that 61 per cent of the proceeds went for transportation, in some other [884] month, if the market were in better shape, a smaller percentage would go for transportation, wouldn't it?

A. Well, there are always some markets in good shape and some markets in bad shape, and the average of all markets varies, of course, but not nearly as much as the average of one market would.

Q. Mr. Nuckton, you were discussing the Pittsburgh delivery service. Who handles the trucking in Pittsburgh for you?

(Testimony of John Nuckton.)

A. I don't recall the name. I would have to ask the executive secretary.

Q. Don't you know that your Pittsburgh flowers are delivered in an Airborne truck?

A. It was at that time, yes.

Q. Don't you know that they are today?

A. I am not too sure of that.

Q. How long ago was the time that you knew they were delivered by Airborne?

A. This was in June, 1951.

Q. And you don't know about today's deliveries?

A. No. I know only that the situation cleared up and that our expenses went down after we changed to Bay Area.

Q. Coming back to the time when Northern California Flower Consolidators was organized, you testified that you were a grower and also a shipper; is that right? [885]

A. A shipper in this area is considered someone who sells flowers, say, to the East. That is called a shipper. And in Florida the same man is called a broker. But here that is a shipper. A grower who ships his own stuff is still a grower.

Mr. Gaudio: That is what you have been told by some of the people in the industry; is that correct?

The Witness: Yes.

Q. (By Mr. Wolf): For instance, Mr. Zappetini at that time grew his flowers and shipped them, didn't he?

A. Yes, but he bought a lot more than he grew.

(Testimony of John Nuckton.)

So do I at the present time. So I am a shipper now, as well as a grower. I have graduated, you might say.

Q. Don't you remember that Mr. McPherson told you that he had received verbal approval of your membership from the Board of Directors of Northern California Flower Consolidators?

A. Not at that time.

Q. You don't remember that?           A. No.

Q. Was there some time after that when you were notified that you could become a member?

A. On the contrary; I was told by some one of the members present, who was supposed to tell me, that my membership was not accepted. It was declined.

Q. I asked you a question a few moments ago, Mr. Nuckton, [886] about who was the delivering trucker in Pittsburgh. You testified something about a period of three weeks in June of 1951. Are you becoming mixed up as to when you were shipping entirely by Airborne?

A. I never shipped entirely by Airborne, so I couldn't be mixed up with that.

Q. But you understand my question. You do not know whether or not today your Pittsburgh flowers are delivered by Airborne's truck in Pittsburgh?           A. I would assume not.

Q. When did you ship with Airborne, Mr. Nuckton?

A. During the weeks ending June 9, June 16 and June 23 of 1951.

(Testimony of John Nuckton.)

Q. Do you ship with them at the present time?

A. No, sir, except in very rare occasions, perhaps.

Q. On rare occasions?

A. Yes. I am not always there. As far as I know, we haven't shipped by Airborne for several months.

Mr. Wolf: I am showing the witness now the usual package of manifests which have been referred to before, dated December 5, 1951. This is the list that I was questioning Mr. Barulich about the other day, Mr. Gaudio, as to the difference in the hauling charges. Do you recall?

Mr. Gaudio: Yes, I recall. This document shows various shipping dates between October 1 and October 27, 1951. [887]

Mr. Wolf: By Mr. Nuckton.

Mr. Gaudio: Well, how does it read, Mr. Wolf?

Mr. Wolf: I will go through them if you want.

Q. (By Mr. Wolf): Here is an Airborne manifest dated October 1, 1951, showing John Nuckton & Company of Palo Alto as the shipper. That is you, isn't it, Mr. Nuckton?

A. That is correct.

Mr. Gaudio: What year?

Mr. Wolf: 1951.

Mr. Gaudio: What month?

Mr. Wolf: October 1.

Q. (By Mr. Wolf): It shows a Bay Area advance charge there. Here is one, October 3, 1951, an Airborne manifest showing the shipper on Oc-

(Testimony of John Nuckton.)

tober 3, 1951, John Nuckton & Company, and it shows Bay Area's advance charge. That is correct, isn't it, Mr. Nuckton?

A. I don't know what is correct about it. It is without my knowledge. It must have been that I was out of town that day, and there must have been some difficulty again.

Q. Here is another one showing John Nuckton & Company as the shipper on an Airborne manifest dated October 6, 1951. You assume these are correct, don't you? A. It is certainly news to me.

Q. As a matter of fact, on these various shipments, Mr. [888] Nuckton, you know who did your hauling to Airborne?

A. This thing says Bay Area, that is all I know.

Q. That is right. And 1951, Mr. Barulich was in charge of that department of Bay Area? In October of 1951? A. Yes.

Examiner Walsh: I think the record so shows.

Q. (By Mr. Wolf): Do you recall giving Mr. Barulich any instructions to—— A. I don't.

Q. Just a moment. (Continuing): ——to make the shipments via Bay Area?

A. I don't recall it, but I was out of town for quite a while in October, and, naturally, someone else was in charge, so I wouldn't know.

Q. Were you out of town in July, August and September of 1951, Mr. Nuckton?

A. I was in New York in July.

Q. How long did you stay there?

(Testimony of John Nuckton.)

A. I was home in August.

Mr. Gaudio: I believe the witness already testified, Mr. Wolf. And, in order that the record may be clear, he hasn't shipped for several months via Airborne.

Mr. Wolf: That is right. [889]

Q. (By Mr. Wolf): Do you recall shipping by Airborne in July, August, and September of 1951, Mr. Nuckton?

A. I looked only as far as June; June and July—early July—was as far as I looked. I didn't go any deeper into my records.

Q. In other words, you are not sure whether you shipped by Airborne in July, August, and September of 1951?      A. No.

Q. But it is possible that you could have; is that correct?

A. Well, a lot of things are possible. I know nothing about it.

Q. Let me show you a statement, Mr. Nuckton, dated October 9, 1951, which is headed, "Charges Advanced Due Bay Area by Airborne Flower and Freight Traffic, Inc.," on which there appears to be charges advanced from Nuckton & Company on July 7, 1951, July 9, July 14, 16, 23, 28, 30 and 31, and also August 1, August 8, August 22, September 5—two charges—and September 8, two charges on September 10 and one on September 22. The statement finishes by saying, "Please make check payable to John C. Barulich, 1717 Belmont Avenue, San Car-



(Testimony of John Nuckton.)

los, California." There also appear other names of flower shippers on that statement.

Do you have any reason to doubt this statement, Mr. Nuckton?      A. No, I haven't.

Q. Now, for these August and September shipments, Mr. [890] Nuckton, in view of the fact that the statement says the charges are payable to Mr. Barulich, is it fair to assume that Mr. Barulich made the delivery from your place of business to Airborne?

Mr. Gaudio: Just a moment. The witness has already testified that, without questioning the authenticity of these documents, they occurred either in his absence or without his knowledge, not that they are not subject to his responsibility, but the testimony previously developed on this document was very definitely exploratory in so far as Mr. Barulich is concerned, that they were, in effect, drayage charges assessed to Airborne.

Mr. Wolf: Oh, that is right, they are drayage charges. I understand.

Examiner Walsh: There is no question about that. I think that the witness is presumed to know his own business. I think he is well qualified to answer that question.

The Witness: May I have the question again?

Mr. Wolf: I will withdraw that question, Mr. Nuckton.

Q. (By Mr. Wolf): Did you ever instruct Mr. Barulich to make these deliveries to Airborne?

A. I recall instructing Mr. Barulich to ship by

(Testimony of John Nuckton.)

Airborne because we were on a spot from our consignee because of this delay in trucking.

Q. And do you now remember shipping by Airborne? [891]

A. Yes, I told you that at the outset.

Q. You testified you remembered shipping in June?      A. That is right.

Q. But now you remember shipping in these other months?

A. No, I don't, because I didn't look it up.

Mr. Wolf: All right. Thank you, Mr. Nuckton.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: No questions.

Examiner Walsh: Redirect examination, Mr. Gaudio.

#### Redirect Examination

By Mr. Gaudio:

Q. Mr. Nuckton, as president and chairman of the board of directors of Bay Area, can you state for the record whether Bay Area undertakes to handle a shipment for anyone except its members in good standing?      A. They do not.

Q. In so far as you have been president and chairman of the Board, have you made it a personal responsibility on your part to observe from time to time the manner in which the officers and directors and executive secretary of Bay Area perform their duties?      A. Yes.

Q. In any of that time, while you have been

(Testimony of John Nuckton.)

president, in accordance with your observation of the officers and directors, and even the members, to your knowledge does Bay Area solicit [892] traffic from anyone—that is, outright solicitation?

A. No, that is not done, except by the members personally telling other growers about the service.

Q. And by that you mean growers and receivers in destination territory, or growers in origin territory? A. Both growers and receivers.

Q. Has any application during your term of office in which the dues required by the board of directors have been tendered, been refused by the board of directors? A. Not to my knowledge.

Q. To your knowledge, since that rule of qualification of membership has been instituted, has anyone been admitted to membership without the prior payment of initiation dues and annual assessment?

A. No.

Mr. Gaudio: That is all.

Mr. Wolf: No further questions.

Mr. Stowell: I don't have a question. It is merely a comment.

Would you state for the record, Mr. Nuckton, that the finalized version of EA 324 is not available? That is the letter, you will recall, which I believe EA 323 was admitted with the qualification that EA 324 would be supplied.

The Witness: I know what you refer to, yes. I signed that. I sent that letter out. [893]

Mr. Stowell: I would like to get the record clear, Mr. Examiner, that EA 323 is admitted, and you

(Testimony of John Nuckton.)

are not expecting the receipt of EA 324, which was the number assigned to the final version which would be obtained if possible.

Mr. Gaudio: I fail to understand the question. Have you made an inspection or check to ascertain whether a carbon copy, for example, of the letter that you ultimately issued is available?

The Witness: There isn't any, no. I have looked for it, and there isn't any.

Examiner Walsh: I received Exhibit 323 subject to receiving the copy of the actual letter mailed, which I reserved for 324.

Mr. Stowell: At this time, will you remove the condition——

Examiner Walsh: There is no condition to it, except Exhibit 324 will be a blank.

Mr. Gaudio: I will call Mr. Zappettini.

Whereupon:

### WILLIAM ZAPPETTINI

recalled as a witness for and on behalf of Bay Area, having been previously sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Gaudio:

Q. Mr. William Zappettini, what is your occupation and address, please? [894]

A. The present occupation?

(Testimony of William Zappettini.)

Q. Yes.

A. I am a wholesale florist, and shipper and grower.

Q. Where do you have places of business?

A. I have a place of business at 160 Fifth Street, San Francisco; 750 Wolf Street, Los Angeles, and 1022 East Industrial Boulevard, Dallas, Texas, and I don't know the address in Fort Worth, Texas.

Q. How long have you been engaged in the flower business in this area?

A. Approximately thirty years.

Q. Did you originate your business in the San Francisco Bay Area?      A. Yes.

Q. And in that period have you augmented it with the places of business you have just described? You have increased your places of business in the places indicated?      A. That is right.

Q. Do you grow flowers as well?      A. I do.

Q. What kind of flowers do you grow particularly?

A. At present, I am growing field growing flowers. In the past time, I operated a greenhouse for several years, such as roses, gardenias and asters and carnations.

Q. You have sold these flowers on the market in the [895] wholesale trade?      A. Yes.

Q. Both locally and in the East?      A. Yes.

Q. In your experience, have you used various forms of transportation?      A. Yes, many.

Q. I take it, then, that you have, even prior to

(Testimony of William Zappettini.)

the advent of air cargo for flowers, used rail transportation?

A. We used, in the early stage, rail trucks. That is about all we had in the early part, before the 30's.

Q. The particular product of flowers requires special handling, does it not, in transit?

A. Always.

Q. How does it move, in refrigerated cars?

A. When that was available, the facility was made to us; in the early part, in 1927 and '28, we made first movement by "reefer" car to the far East, over east to Chicago, and then, of course, more facilities came in, and we had almost daily refrigeration from San Francisco to Chicago, with the exception of Sundays and holidays.

Q. What particular consideration eventually prompted you to utilize air carrier service for the transportation of flowers to the eastern markets?

A. Well, it gives us a tremendous advantage on this end of [896] the country that we can move the flowers overnight to many cities in the United States, and, consequently, we ship more flowers.

Q. By that you mean, if you can land your flowers at a basis that would ensure favorable competition with the eastern markets, that you would utilize air carrier service; is that correct?

A. We use the fastest and the best possible service that we can obtain.

Q. Is the cost of that expedited service of primary consideration in making available to you the markets in the eastern destination territory?

(Testimony of William Zappettini.)

A. Of course, we have to watch that the cost does not become too high.

Q. Is there a definite cost ratio beyond which the cost of transportation makes it prohibitive to indulge in the eastern markets?

A. Yes, especially such a period as we are now, as we have been in the last two or three years.

Q. Until about the fall of 1949, when Consolidated Flower Shipments, as it was known then, was first organized, did you ship by air?

A. We shipped by air. I believe we started in 1937 and '38, and then we were stopped by the war. It became non-essential, I mean, and we were forced by the war to stop shipping by air. [897] And then, after the war was over, we resumed shipments by air.

Q. What service did you use at that time?

A. In the early part, in the early stage, we used to just air ship them, we called it then. I don't remember the classification, but there was straight shipment; we delivered to the airline, and out they went. Then the air express came into play. That was prohibitive. And then we started to make a straight shipment to the airline.

Q. Has your experience in that service indicated that the larger the pool or the consolidation, the more economical form of transportation you can enjoy?

A. We started to notice considerable went to the airlines, when they started to publish a tariff, and some air cargo lines came into the picture at that

(Testimony of William Zappettini.)

time, and they started shipping flowers. And they gave us a tariff, and they gave us an illustration how the flowers can be landed cheaper at most cities.

Q. Did you say whether you used Airborne's service prior to the organization of Bay Area? Have you used Airborne? A. Yes.

Q. While you were using Airborne, did you have an opportunity to examine the cost of your transportation prior to Bay Area's organization?

A. Will you repeat the question?

Q. Prior to Bay Area's organization, have you since made a survey to determine the cost of Airborne's service at that time? [898] A. Yes.

Q. Have you made a comparison between the cost of that service per box and the cost to you per box since your participation in the Bay Area organization? A. Yes.

Q. Have you any way of telling us what the average differential on a per box basis is?

Mr. Wolf: Mr. Examiner, the time period is important again, please.

Mr. Gaudio: Well, was it for that period, just before and after?

Mr. Wolf: The formation of Bay Area, you mean?

Mr. Gaudio: The formation of Bay Area, yes.

A. Well, before the formation of Bay Area—I am speaking around 1947 and '48—the shipping became very high; the transportation began to give us trouble.

Examiner Walsh: Can you confine it to within



(Testimony of William Zappettini.)

a period of about a month before Bay Area was formed, so that we can get a fair picture of the comparison?

The Witness: Before Bay Area took place?

Examiner Walsh: You might try to state for the record, which I believe another witness did before, that after joining Bay Area he had certain savings. Maybe that would be a better way of putting it.

The Witness: Yes. In other words, Bay Area started in [899] '49, in October. In September, 1949, we used Airborne. There we noticed a great deal of difference on the same amount of boxes, for the same city. It was a considerable saving.

Mr. Wolf: Mr. Examiner, I dislike interrupting, but I would like to ascertain the foundation of this comparison. One might have been a direct shipment and the other might have been a consolidated shipment, which, of course, would not be comparative.

Examiner Walsh: I am assuming that we are taking into account the shipper's entire expense during the period immediately before, and all shipments he made after, within, say, about a month after Bay Area was formed, so that he might be able to extract some sort of a figure with respect to all shipments.

Q. (By Mr. Gaudio): With respect to the time element, Mr. Zappettini, what has your examination determined to be the differential per box?

A. Well, if we take the chrysanthemum season, from San Francisco to Chicago, I ship "mums" in

(Testimony of William Zappettini.)

October and in November, which are the same item and the same weight, same dimensional weight, same destination, same amount of flowers in a box, we find, like in Chicago, the differential was perhaps as high as \$2.50 per box.

Q. Could you give us an approximation for that period, say, September of 1949, and October of 1949? Can you tell us how many boxes you might have shipped by air, via Airborne, [900] during September, and via Bay Area during October, Mr. Zappettini?

A. On a single day or a single month?

Q. Let's start with a day, on a daily basis, if you can tell us, on the average.

A. Of course, we don't ship them all to Chicago. The amount of boxes shipped by air, say, give it to Airborne, in a previous month, a day will be fifty or sixty boxes, more some days and some days less, and the same thing will occur a month later. November really is not a heavy shipment, as heavy as October. September and October will be the two parallel months.

Q. On that basis, Mr. Zappettini, would it be a reasonable estimate to say that you could effect a maximum saving of some \$200 per day via Bay Area during that period?

A. Well, that will be an assumption, because, as I said, we didn't ship them all to a particular city. However, the saving that was being recognized was a great saving.

Q. Are there periods of time when you do not

(Testimony of William Zappettini.)

ship at all? In other words, is there any lapse in shipments due to flower seasons, in your instance, or is there a continual turnover of various classes of flowers?

A. We ship the year round, changing from item to other item. I mean to say that sometimes we ship heavy and sometimes we ship light. That will all depend on holidays and seasons of the year, such as at Easter time, Mother's Day; and asters last for about a month or a month and a half, and chrysanthemums [901] season is about three to four months; but we do ship all the year round.

Q. On the annual basis, then, this saving which you effect through Bay Area could become a substantial sum, could it not?      A. I believe so.

Q. In the initial organization of Bay Area, did you individually contribute any funds for its incorporation?      A. Yes.

Q. And at the outset there was no dues requirement for members, was there, under the articles?

A. No.

Q. But persons would be admitted to membership if approved by the board of directors?

A. Yes.

Q. Subsequently, during your term of office as President, formerly as president, and chairman of the board of directors, was the initiation fee and annual membership dues established by the board of directors?      A. Yes.

Q. And you personally are a member in good

(Testimony of William Zappettini.)

standing in accordance with that rule of the board?

A. Yes.

Q. In your office as president, to your knowledge, did Bay Area, as such, actively solicit any traffic from anyone other [902] than its own members—solicit business, in other words?

A. Our office, you mean to say?

Q. No, Bay Area.

A. Bay Area ever solicit members?

Q. Solicit traffic. A. Oh, yes, sure.

Q. And under whose auspices would that be done?

A. It would be done by the president or the board of directors; or the annual meeting, or semi-annual meeting, whatever it might be.

Q. And would you discuss various applications, if any applications for membership had been presented? A. We did.

Q. To your knowledge, what was the maximum number of members that were ever admitted to Bay Area? A. From twenty to twenty-five.

Q. And outside of those members which had been admitted either in the beginning or subsequently on the payment of dues, has Bay Area gone beyond the membership roster and accepted traffic, to your knowledge, from any non-member?

A. No, only the people that were members, and they were listed on the roster and were paid-in members, paid all the dues. They were admitted to membership.

Q. You were in the hearing room, I presume,

(Testimony of William Zappettini.)

when Mr. Bonaccorsi, Mr. Enoch and Mr. Nuckton were testifying regarding [903] the responsibility or the recognition of responsibility as between Bay Area and its members on the loss of shipments?

A. Yes.

Q. And is that policy in accordance with the by-laws and the determination of the board of directors of Bay Area?           A. Yes.

Q. You, as an individual member shipper, abide by that policy, do you not?           A. Yes.

Q. Incidentally, have I asked you if you ship on consignment basis or straight sales?

A. Most of our sales are straight sales.

Q. In so far as the loss of straight sale shipments are concerned, do you ever look to Bay Area or expect recompense from Bay Area as a corporation for reimbursement of your loss?           A. No.

Q. You have heard Mr. Barulich testify that as executive secretary he carries into execution the directions of the board of directors and the members with respect to loss and damage claims?

A. Yes.

Q. The routine procedure described by Mr. Barulich is in keeping with your policy as a member, and member of the board of directors?

A. Yes. [904]

Q. You referred to some difficulty prior to the inception of Bay Area regarding your transportation. Was that over any particular phase or element of the transportation service?

A. The transportation difficulty arising was

(Testimony of William Zappettini.)

around early '46 or '47, right after the war, and business was pretty poor at that time, and all kinds of shipments began starting, and we found a lot of discrepancies and a lot of errors occurred very frequently in those shipments, and then we started to check up, and that is when we realized that the errors were occurring.

Q. Those discrepancies having occurred with C.O.D. remittances?

Mr. Wolf: Just a moment, Mr. Examiner. I don't know what that has to do with the issues of this case. I think the witness is talking about 1947 and 1948.

Mr. Gaudio: He indicated that they were all difficulties that brought up the inception of Bay Area.

Mr. Wolf: I don't believe that he predicated his answer on that, Mr. Examiner.

Mr. Gaudio: Could we have my last question and Mr. Zappettini's reply read?

Examiner Walsh: Will you read it, Mr. Reporter?

(Record read.)

Mr. Gaudio: I will rephrase the question.

Q. (By Mr. Gaudio): Were those conditions taken into account in the [905] determination of policy in the formation of Bay Area?

A. At the time we started, we got to do something about it, we cannot longer proceed in the same way, we have to improve it, do something about it.

(Testimony of William Zappettini.)

Q. There is some discussion in these proceedings regarding competition between the members of Bay Area. Mr. Zappettini, are you aware of any competitive factors as between the members of Bay Area that have anything to do with their mutual transportation problems?

A. You will have to explain a little more.

Q. Is there any competitive factor between the members of Bay Area that has any relation to the kind of service they are getting from Bay Area or any other carrier?

A. I can't get that.

Q. Does competition, if any, exist between the members in any way involve the service which you anticipate receiving from your organization known as Bay Area? In other words, is there any competition?

A. Yes, there is plenty competition.

Q. Do you consider that factor to affect in any way the manner in which Bay Area functions for your benefit?

A. Yes.

Q. In what respect?

A. In the Bay Area shipping that we are making we know all the time whether we can ship merchandise to our consignees [906] at a certain price, and what effect they have on the consignee to ship those flowers at that price. We know that they can sell them at a profit.

Q. Are you referring now to meeting competition in destination territory?

A. When I do sell merchandise, I am in need to know what the cost of the merchandise should be

(Testimony of William Zappettini.)

to my consignees or to my customers on the other end.

Examiner Walsh: I don't think that is responsive to the question. Are you trying to develop something with respect to preferential treatment as between——

Mr. Gaudio: It was indicated by the enforcement attorney that inasmuch as Bay Area members are all wholesalers or growers they are in competition with each other and cannot sleep in the same bed, as it were, through their mutual interests in Bay Area.

Examiner Walsh: The competition is for eastern markets, eastern business?

Mr. Gaudio: The fact that they were competitive in this area, yes.

Examiner Walsh: Competitive from their own business standpoint.

Mr. Gaudio: Do you understand that?

The Witness: I can answer now. No; no shipper is competitive. [907]

Q. (By Mr. Gaudio): At any event, they don't let competition enter into their relationship as members in this organization?

A. As a shipper, regardless if he belongs to Bay Area or belongs to any group, he is in competition.

Examiner Walsh: Now you have come around to my question.

Do you have much more examination?

Mr. Gaudio: Just a couple of items.



(Testimony of William Zappettini.)

Q. (By Mr. Gaudio): Mr. Zappettini, do you know an individual by the name of Harry Avila?

A. I do.

Q. When did you first come to know him?

A. I know him for quite some time, before 1948.

Q. Did you meet him prior or subsequent to your first meeting with Mr. John C. Barulich?

A. I met him before.

Q. Where did you meet him?

A. I met him at my office, and he also visited at my home.

Q. Was he at one time considered as a possible representative, as indicated in this record, as traffic manager for this group of shippers? A. Yes.

Q. Did he ever meet with the members of the group? [908] A. Yes.

Q. He wasn't retained, however? You didn't employ him? A. No.

Q. Was it after that that you discussed the matter with Mr. Barulich? A. Yes.

Q. Were there any others that you had considered as traffic manager or agent?

A. Well, at that particular time, there was a Mr. Avila very much in play in that discussion. We had a meeting, two meetings, and he was turned down. And the next movement was when Mr. Barulich was brought into the picture by Mr. Reynolds.

Q. Do you recall the time when Mrs. Decia ceased to have any further connection with the Bay Area group?

(Testimony of William Zappettini.)

A. I don't know specifically the time, but it was at the beginning of the forming of Bay Area.

Q. Was that in accordance with the wishes and the directions of the members and the board of directors of Bay Area?

A. Yes, it was discussed. We had a meeting, and it was approved in a general way.

Q. And who was brought into the organization as secretary after that?

A. It was Mr. Barulich.

Q. At that time, the office of executive secretary was then introduced; is that right? [909]

A. Yes.

Q. Is Mr. Barulich an authorized—is he, or was he, you can state for the record—an authorized signator to the bank account of the association?

A. Yes.

Q. That was pursuant to a meeting of April 14, 1950, which is part of this record? A. Yes.

Q. Mr. Zappettini, have you sustained loss or damage to your shipments in the past?

A. Plenty.

Q. Have any of them occurred which have been an outright loss to you without recompense?

A. Yes, sir, many.

Q. In those instances, have you ever undertaken or seen fit to look to Bay Area for recompense?

A. No.

Q. Do you understand that under the articles and bylaws of Bay Area there is no recourse by

(Testimony of William Zappettini.)

the member for the loss or damage to a member of the corporation?      A. I do.

Q. And with that knowledge you entered into the membership of Bay Area, and that policy is acceptable to you?      A. Yes.

Q. I show you a number of documents, one of which is [910] labeled Airborne's Air Freight Waybill and Invoice, No. 98523, dated May 18, 1951, I think it is. I believe it is May 10, 1951. And I ask you if this was given you at the time the shipment was tendered to Airborne?

A. If the shipment was what?

Q. If this document was given to you at the time your shipment was tendered to Airborne for transportation.

A. That I couldn't tell you. Perhaps I can examine it and check. I am not too familiar with the shipping department. I think this is a receipt mailed back to us by the consignee.

Q. Now, I call your attention to the copy entitled "Shipper's Copy." Does that show on it there were charges for pick-up, consolidation or delivery services?      A. No.

Mr. Gaudio: We offer this as respondent's exhibit next in order.

Examiner Walsh: Exhibit No. 12.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 12.)

Examiner Walsh: Do you have any objection to carrying cross-examination over until Monday?

(Testimony of William Zappettini.)

Mr. Wolf: No, not at all.

Mr. Gaudio: Is there any objection to the introduction of this document?

Mr. Wolf: No. [911]

Mr. Gaudio: May it be received at this time?

Examiner Walsh: Shipper's copy of Airborne's waybill and invoice, marked for identification as Bay Area's Exhibit No. 12, will be received in evidence, in the absence of objection.

(The document marked as Bay Area's Exhibit No. 12 for identification was received in evidence.)

Mr. Gaudio: With that, I conclude my direct examination of Mr. Zappettini.

Examiner Walsh: We will recess at this time until 9:30 Monday morning.

(Whereupon, at 5:40 o'clock, p.m., the hearing was adjourned until Monday, March 3, 1952, at 9:30 a.m.) [912]

Proceedings

March 3, 1952.

Examiner Walsh: Come to order, gentlemen.

Before we proceed with further examination of Mr. Zappettini, I would like to make clear for the record the fact that Respondents have agreed that all of the testimony taken in executive session will be made a part of the public record, with the exception

of the photostatic copies of Mr. Barulich's income tax returns for the years 1949 and 1950.

Do you agree with that, Mr. Gaudio?

Mr. Gaudio: That is correct, sir.

Examiner Walsh: And you will show such in an amendment to the motion which you will file?

Mr. Gaudio: I will file it immediately following the conclusion of the oral hearing, amending the motion in behalf of Mr. Barulich.

Whereupon,

WILLIAM ZAPPETTINI

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Gaudio:

Q. Mr. Zappettini, during your earlier testimony, you indicated that you had been having difficulties with Airborne in the handling of your shipments. I am speaking now of the time just prior to Bay Area, when Bay Area was organized.

Was one of those elements in question the remittance of [917] C.O.D. collections? A. Yes.

Q. I show you a statement entitled, "Unpaid C.O.D.'s, Airborne Flower & Freight Traffic, Inc., for the period April 26, 1949, to August 1, 1949," together with your shipping invoices attached, and ask you if this list and attached invoices correctly show the shipments handled by Airborne for the commodity indicated during that period; is that correct?

A. Yes, this is correct, by our bookkeeper.

(Testimony of William Zappettini.)

Mr. Gaudio: We offer this as Respondent's exhibit next in order at this time.

Examiner Walsh: The foregoing exhibit is marked for identification as Bay Area's Exhibit No. 13.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 13.)

Q. (By Mr. Gaudio): This BA No. 13 for identification, with various invoices dated from June 4, 1949, through July 5, 1949, shows total outstanding collections in the sum of \$2,498.92, for your account in the hands of Airborne during that period; is that correct? A. That is correct.

Q. And I show you a letter dated June 23, 1950, addressed to Airborne Flower & Freight Traffic, Inc., registered, return receipt requested, which receipt is thereto attached, which is [918] approximately a year later, and ask you if that was your final letter of demand given to Airborne, which was issued over your signature? A. Yes.

Q. Following that letter, did you receive satisfaction on your outstanding C.O.D. collections as indicated by BA Exhibit No. 13?

A. Yes, we received a check for it.

Mr. Gaudio: We offer this as Respondent's Exhibit No. 14, for identification.

(Testimony of William Zappettini.)

Examiner Walsh: Letter from Mr. Zappettini to Airborne, dated June 23, 1950, will be marked for identification as Bay Area's Exhibit No. 14.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 14.)

Q. (By Mr. Gaudio): Was this period for these invoices indicated on Exhibits 13 and 14, the only occurrence in your experience with Airborne on the matter of C.O.D. collections?

A. You say, was it the only one?

Q. The only one.

A. We had, at a later time in 1951, too.

Mr. Wolf: Mr. Examiner, in regard to anything occurring as late as 1951, I am going to object, as all of this has been offered apparently to show that Mr. Zappettini was having [919] trouble prior to or about the time of the formation of Bay Area.

Mr. Gaudio: Mr. Examiner, the impetus which brings an organization into being may continue. We consider it relevant to the issue, mainly as to the reasons for the organization, and the continuance desired by the shippers.

One of the serious considerations is the early receipt of remittances on C.O.D. collections.

Examiner Walsh: Objection overruled.

Q. (By Mr. Gaudio): I show you another file of documents, Mr. Zappettini, attached to a letter demand of June 8, 1951, addressed to Airborne Flower & Freight Traffic, Inc., together with your shipping invoices and a voucher attached thereto,

(Testimony of William Zappettini.)

and ask you if those are additional to the ones referred to in Exhibit BA 13?       A. Yes.

Q. What was the total outstanding C.O.D. collections on this number of shipments?

A. The amount in June is entered here—June 11, \$4,536.17, a check for that.

Q. You received a check for that on June 11, 1951?       A. Yes.

Mr. Gaudio: We offer this as Respondent's Exhibit next in order, No. 15.

Q. (By Mr. Gaudio): Have you found, Mr. Zappettini, that your membership [920] in Bay Area, together with the supervision exercised therein by you as a member, has facilitated the attention to returns in the matter of C.O.D. collections?

A. Yes, very much so.

Examiner Walsh: Letter from Mr. Zappettini to Airborne, dated June 8, 1951, and attached shipping documents of the William Zappettini Company, are marked for identification as Bay Area's Exhibit No. 15.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 15.)

Q. (By Mr. Gaudio): As President and Director of Bay Area, has this subject of C.O.D. collections come up before the Board for discussion on numerous occasions?       A. Yes.

Q. And in that connection, does the organization



(Testimony of William Zappettini.)

through its officers and directors, exercise direct control over the executive secretary for that purpose?      A. They do.

Q. Do you recall the testimony of Mr. Barulich early in this hearing, regarding the control exercised by the Board of Directors in the matter of routing and handling of shipments?

Do you recall that testimony?      A. Yes.

Q. I show you a mimeographed sheet entitled, "Bay Area [921] Shippers & Growers, Inc.," dated July 12, 1949, and ask you if you recall issuing that document at that time?      A. Yes.

Q. This document issued over your signature as the then President, under the then name of Bay Area as Bay Area Shippers & Growers, Inc., July 12, 1949?      A. Correct.

Mr. Gaudio: We offer this as Respondent's exhibit next in order, No. 16, for identification.

Examiner Walsh: The document over Mr. Zappettini's signature, and entitled, "Bay Area Shippers & Growers, Inc.," is marked for identification as Bay Area's Exhibit No. 16.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 16.)

Q. (By Mr. Gaudio): I show you a carbon copy of a letter dated June 26, 1950, addressed to Mrs. Virginia Decia, Secretary, Northern Califor-

(Testimony of William Zappettini.)

nia Flower Consolidators, and ask you if the original of that issued over your signature as of that date?      A. Yes.

Mr. Gaudio: Does counsel have any objection to my reading it into the record? It is very brief.

“Dear Mrs. Decia: Due to the precarious position in which I find myself, I hereby submit my resignation as President of the Northern California Flower Consolidators. [922]

“Very truly yours, William Zappettini Company, by William Zappettini.”

Examiner Walsh: Do you wish to have that marked for identification?

Mr. Gaudio: Yes, mark it for identification as Exhibit No. 17.

Examiner Walsh: Mr. Zappettini's letter to Mrs. Decia as of June 26, 1950, is marked for identification as Bay Area's Exhibit No. 17.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 17.)

Q. (By Mr. Gaudio): Mr. Zappettini, have you examined the Western Florists Directory of May, 1951, to ascertain the number of growers and shippers of flowers listed therein?

A. Yes, I see it occasionally.

Q. And it is true, is it not, that on page 66, under the heading, “Shippers, San Francisco Area” are listed 27 under that designation?

(Testimony of William Zappettini.)

A. Yes.

Q. And under the heading of, "Members, San Francisco Flower Growers Association, and others," on pages 66 and 67, there is a total of 131 such individuals or travelers?

A. More or less, about that.

Q. And on pages 67 and 68, under the heading of, "Members [923] of the California Floral Markets, Inc.," it shows a total of 71; is that correct?

A. That is correct.

Q. That latter group, the California Floral Markets, Inc., is the Japanese section of the trade or industry; is that correct?

A. Yes.

Mr. Gaudio: Without offering the book in evidence, Mr. Examiner, I would like to read from page 67.

Adachi Nursery, and K. S. Yamane appear in that particular list. They were individuals testifying previously, in this hearing.

Q. (By Mr. Gaudio): That shows in the aggregate a total of 229 in the San Francisco Bay Area and Peninsula; is that correct?

A. Yes, more or less. Of course, some go out, and some come in.

Q. This was as of 1951; is that right?

A. Yes.

Q. From your knowledge and experience in the production and shipment of flowers in this area, are all of those listed variously, prospective shippers of flowers in interstate commerce?

(Testimony of William Zappettini.)

A. I will say that the great majority will be shipping flowers. [924]

Q. By one form of transportation or another?

A. Yes.

Q. Mr. Zappettini, during your office as President, did you experience any need for revision or change in the agency or contract truckers' arrangements which Bay Area had in destination territory? A. Yes, I did.

Q. Do you recall the testimony of Mr. Barulich in that connection, regarding the truckers employed by Bay Area in destination territory?

A. Yes.

Q. As an officer and director of Bay Area, have you found that the organizational setup in behalf of the member shippers, gives you, as a member shipper, a measure of control over the contract trucker which you would not otherwise enjoy via Airborne? A. I do.

Mr. Gaudio: You may cross-examine.

Examiner Walsh: Cross-Examination, Mr. Wolf.

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Zappettini, the other day, if I understood your testimony correctly, you said that when Bay Area started, or within a month or so, or a few months thereafter, you made comparisons of Bay Area's charges and Airborne's charges. And

(Testimony of William Zappettini.)

did [925] you say that in September and October of 1949, you compared the Airborne charges and the Bay Area charges for those months?

A. I recall I testified that they would be the best month or two to make a comparison, like September or October. That is what I believe I testified.

Q. In other words, you compared shipments that you made in September and October of 1949, where you made shipments by Airborne and by Bay Area, during those months?

A. I believe we did. I am not positive, but I believe we did, because we are shipping daily, and sometimes we use Airborne, and sometimes we use Bay Area.

Q. When did you make this comparison?

A. I imagine we made them at that time.

Q. You made them at that time?

A. I suppose, at that time.

Q. Have you looked at any of your records since then?

A. I looked several times at the records, yes.

Q. When was the last time you looked?

A. I could not give you the specific date, but as routine in my office I do look at the charge made to ship them, always.

(Testimony of William Zappettini.)

Q. And you remember now, that you shipped in September and October, and made comparisons then?

A. I did not testify that I made the comparison at that time.

Q. No, but you shipped at that time? [926]

A. I believe we did.

Q. Before Bay Area was formed, did you make all your shipments by Airborne?

A. Not all the shipments.

Q. Where did you make the others?

A. We made some straight shipments direct to the air line, and some air express, and some rail express.

Q. Do you recall in your experience, Mr. Zappettini, on consolidations, having seen the Airborne rate lower than the Bay Area rate?

A. No, I do not.

Q. You think that if you shipped 5,000 pounds by Bay Area, you can do it as cheaply as you could by Airborne?

A. Well, I do not know. I am not familiar with the Airborne traffic rates. However, I know that we ship them cheaper. I do not say the quantity, but we do ship cheaper, we did make that comparison when we shipped with Bay Area—than we can with Airborne.

Q. Mr. Zappettini, referring to these C.O.D.'s which you have put in evidence, that you claim

(Testimony of William Zappettini.)

were unpaid by Airborne for some period of time, you eventually received one check in full, did you not?

A. The check was for some of the C.O.D.'s back in 1947. You wanted the last check, you mean?

Q. No. You testified that you received a check for [927] \$4,536.17, from Airborne, on June 12, 1951?

A. Correct.

Q. Did that cover the C.O.D.'s listed in Exhibit No. 14, and Exhibit No. 15, as well as the C.O.D.'s listed in Exhibit No. 13?

A. That is right.

Q. That was the settlement for these two big bunches of C.O.D.'s that were unpaid; is that correct?

A. That is right.

Q. Do you remember why those were unpaid, Mr. Zappettini?

A. Well, just did not get the check.

Q. Let me try and assist your recollection a little bit.

Do you remember you made a rather large shipment of flowers, and you put in a claim to the insurance company on them?

Do you remember that?

A. I remember very well.

Q. And as a matter of fact, you had sold those flowers at a profit, you remember that?

A. Well, I do not think we know about it, because we put in the claim.

Q. Do you not remember that you were an in-

(Testimony of William Zappettini.)

sured under that particular policy, along with Airborne?      A. That is right.

Q. And you put the claim in to the insurance company?      A. That is right. [928]

Q. And the insurance company turned it down, do you remember that?

A. I do not know if they turned it down. We got paid.

Q. The insurance company did not pay you the amount of your claim, did it?

A. The insurance company paid us according to the amount of the settlement.

Mr. Gaudio: Are you speaking now of the loss or damage to the shipment?

Mr. Wolf: I am trying to find out, Mr. Gaudio. I do not know all of the detailed facts.

Q. (By Mr. Wolf): Mr. Zappettini, you remember you wanted a thousand dollars more than the insurance company paid you?

Mr. Gaudio: On C.O.D. collections, or on——

Mr. Wolf: This was on a damaged shipment, was it not?

Mr. Gaudio: Just a moment, Mr. Zappettini.

This is improper Cross-Examination, Mr. Examiner. We made no reference in this particular line of inquiry—if that is your purpose—regarding valuation.

This is a matter of C.O.D. remittances.

Mr. Wolf: Mr. Examiner, this is all preliminary as an explanation of these unpaid C.O.D.'s.



(Testimony of William Zappettini.)

Mr. Gaudio: The only explanation on a C.O.D. is that the carrier did not get the money. [929]

Examiner Walsh: I think we really should have some more facts.

Mr. Wolf: I am trying to develop the facts. I have to start at the beginning.

Examiner Walsh: Proceed.

Q. (By Mr. Wolf): Mr. Zappettini, you wanted a thousand dollars more from the insurance company than they paid you, do you remember that?

A. You are going to let me reveal this thing properly?

Q. Go ahead, if you want to tell it.

A. This claim was put out long after this 1947 C.O.D. was due Zappettini Company.

Mr. Wolf: Pardon me.

Mr. Examiner, there are no 1947 C.O.D.'s. They are 1949 and 1951, I believe.

Mr. Gaudio: The witness, in answer to one of your earlier questions, indicated that he had C.O.D. remittance problems as early as 1947.

Examiner Walsh: Let us see if any of these C.O.D.'s involved claims for damaged shipments. I think unless we have that fact established, that this may not be proper examination with respect to these particular items.

Mr. Gaudio: That is right.

The Witness: Mr. Examiner, we can prove that those C.O.D.'s, [930] there was no claim on the C.O.D.'s due for anything at all. It was just a—

(Testimony of William Zappettini.)

just C.O.D. money remittances coming back to the William Zappettini Company. There was no delay for any purpose, on that.

Q. (By Mr. Wolf): Mr. Zappettini, do you remember that you had a dispute with Airborne about the claim you put in with an insurance company, and the insurance company would not pay you as much as you wanted? A. That is correct.

Q. And do you remember that thereafter, Airborne had prepaid some shipments for you, and you would not pay Airborne the prepaid shipments?

Do you remember that? A. That is correct.

Q. And do you also remember that Airborne then withheld from you the C.O.D. collections that it had made, because you were holding out from them the prepaid expenses that they had made for you? A. That is not correct.

Q. Did you not have a big dispute with Airborne about that insurance claim?

A. We had a dispute about the insurance, because we did have the insurance, and the insurance company, they were not accepting Mr. Airborne's say-so. The insurance was Airborne's. [931]

The insurance company, they were requesting about paying the thousand dollars insurance that we had on our shipment, therefore Mr. Airborne had the difficulty in getting the insurance company to pay Zappettini Company the money, that thousand dollars insurance, on the shipment that we had.

And we had a difficulty in getting it.

(Testimony of William Zappettini.)

Q. I see. But you held out some prepaid charges against Airborne, did you not? A. Yes.

Q. Did not Airborne hold out at that time, some C.O.D.'s from you, because you would not pay the pre-payments?

A. Mr. Airborne wrote to me, and sent me a statement, and I sent him a check in amount approximately what those payments were due for transportation on Airborne.

Q. How much of those pre-payments did you hold out?

A. There was about a thousand dollars. We sent them a check for that.

Q. That is right. And then did not Mr. MacPherson tell you that they were going to hold some of your C.O.D. money until you were settled on the pre-payments?

A. That was on the last '51 payment. This last '51 payment, they held out some of that C.O.D. money; but in the previous time, there was not anything involved on that, at all.

Q. Now, what is the date of that resignation of yours from Northern California, Mr. Zappettini? [932] A. I think June 26, 1950.

Q. And Bay Area had been formed about a year earlier, do you remember? A. Yes, '49.

Q. In June of 1949. And you had been elected President of Bay Area; and after Bay Area was formed, you shipped by Airborne for how long?

A. I do not know how long we did ship. We shipped some shipments every day or so. There was

(Testimony of William Zappettini.)

always some shipments going out, whatever the route called for. That I do not know, how much we shipped.

Q. Do you not know as a fact that in 1949, Mr. Zappettini, your last shipment by Airborne, was on August 10?      A. Well, I do not know that.

Q. Do you not remember that you shipped for just two months after Bay Area was formed in June of 1949?      A. Perhaps we did.

Q. Just two months. Do you remember that?

A. But we ship continually with Airborne.

Q. How many shipments did you make with Airborne in September of 1949?

A. Well, I could not tell you that, how many shipments we made. It would be impossible for me to tell you how many shipments we made.

Q. You remember you did ship with them, in 1949, in [933] September?

A. To my best recollection, the answer is that we shipped whatever is necessary with the route that we decided to ship, and I do not know just how many shipments we made.

Q. Do you know what truckers handle your deliveries in Pittsburgh, Mr. Zappettini?

A. No, I do not.

Q. Mr. Zappettini, you are Vice-President now of Bay Area, are you not?      A. Yes.

Q. And the Board of Directors exercise control over the deliveries at the receiving end?

A. We make a determination on our board, and we instruct the secretary to follow through.

(Testimony of William Zappettini.)

Q. You have testified that there are 229 potential shippers in this area?

A. I did not put the word, "potential."

Q. Well, I think your counsel used that, in questioning you. If we went through this list of 229, do you think you could pick out the number of air shippers?

A. Well, you can pick up a larger number than in this list.

Q. Do you remember that you found a differential as high as \$2.50 a box, between Bay Area and Airborne?

A. Yes. [934]

Q. Can you produce shipping documents, showing that difference?

A. Yes.

Q. Will you bring some—

A. I have them here with me.

Mr. Gaudio: Have you got them with you?

The Witness: Yes.

Mr. Gaudio: Fine.

Mr. Wolf, have you had a chance to examine those documents?

Mr. Wolf: To some extent.

Mr. Gaudio: I am just wondering if we could not include Mr. Zappettini's comparisons in this comparative statement we are going to make?

Mr. Wolf: I am going to ask him about these.

Mr. Gaudio: Very well.

Q. (By Mr. Wolf): Mr. Zappettini, you have just handed me a statement of Airborne, showing a shipment on April 16, 1951, to Dallas, Texas?

(Testimony of William Zappettini.)

A. Yes.

Q. From Oakland? A. Yes.

Q. From Oakland?

A. Yes.

Q. You have also handed me a statement, or rather, an air bill, of American Airlines, from San Francisco to Dallas, Texas, a shipment on April 7, 1951? [935] A. Yes.

Q. Now, did you use these two documents to make a comparison of charges? A. No.

Q. You did not? A. No.

Q. Well, there is no comparison to make here, is there? A. It is a big comparison.

Q. Well, go ahead and make it.

A. Between the transportation.

Q. All right. Where is the higher transportation?

A. The higher transportation is on the Airborne.

Q. Will you notice that on the Airborne shipment, there were four boxes? A. Yes.

Q. And they were four-foot boxes?

A. That is correct.

Q. On the American Airlines bill, there are four boxes, but they are three-foot boxes; is that correct?

A. That is right.

(Testimony of William Zappettini.)

Q. Will you notice that the air carriers' rate on the Airborne bill, is \$18.34? A. Yes.

Q. Will you now look at the rate on the American Airlines bill. That is also \$18.34, is it not? [936]

A. Correct.

Q. Will you notice that the weight on the American Airlines bill is 181 pounds? A. Yes.

Q. And the weight on the Airborne bill is 265 pounds? A. Well, now——

Q. Wait a minute. Do you notice that?

A. Yes, I do.

Q. If you take the weight of 181 pounds, times the rate of \$18.34, and multiply it, you will come out with \$33.20, will you not? A. Correct.

Q. And you take the 265 pounds times the rate of \$18.34, you will come out with \$48.60, will you not? A. That is right.

Q. So there is \$15 difference right there, due to weight, is there not? A. That is right.

Q. Now, let us go on to the next item.

There is no pickup charge on the American Airlines bill, is there? A. That is right.

Q. You delivered it yourself? A. Yes.

Q. All right. There is a pickup on the Airborne bill of [937] \$2, is there not? A. That is right.

Q. Because Airborne picked it up?

A. That is right.

Q. There is no delivery charge on the American Airlines bill. There originally was a \$3 charge on the Airborne bill, but that has been deleted, has it not? A. That is right.

Q. Because sometimes in Dallas, you want Airborne to deliver for you, do you not? A. No.

Q. And sometimes you pick it up, do you not?

A. We pick that up always.

Q. All right. So the \$3 delivery charge is out of Airborne, is it not? A. That is right.

Q. On the American Airlines bill, there is an excess value transportation charge of 10c, and on the Airborne bill, there is \$6.08, is there not?

A. That is right.

Q. Because you want the protection given to you by Airborne on excess valuation, do you not?

A. We did not ask to do it.

Q. Don't you always request excess valuation?

A. No, sir, unless we tell them on the air bill that goes [938] on, we do not want them.

Q. You do not want excess value?

A. Unless we put it on ourselves.

Q. Have you got these manifests for this?



(Testimony of William Zappettini.)

A. This one here, that is the only document I have here.

Q. This shipment by Airborne was from Oakland Flower Shop?      A. That is right.

Q. You know, do you, who made out the manifest?

A. The Oakland Flower Shop Company made it.

Q. And who made out the air bill?

A. They made out the air bill themselves.

Q. Who is "they"?

A. The Oakland Flower Shop.

Q. They may have requested excess value?

A. Sure.

Q. Then there is the transportation tax on the American Airlines, of \$1.04, and on the Airborne of \$1.70?      A. Mine.

Q. Well, it is not clear.

So the total Airborne bill is \$48.38, is it not?

A. That is correct.

Q. And the total charges on the American Airlines bill is \$35.58, is it not?      A. That is right.

Q. Because you also have there in the American Airlines bill, a Bay Area charge of \$1.24?

A. That is right.

Q. Now, are those bills any comparison?

A. There is a comparison to show that you have 100 bunches of roses on both shipments, going down to Dallas from San Francisco, and the difference is that on the other end, on that one, you land for \$35.58, and on the other one, the original was \$81.47, and after being corrected, the bill became \$48.38.

(Testimony of William Zappettini.)

Q. You do not consider, Mr. Zappettini, that the charge for air carriage on 265 pounds is \$15 higher than on 181 pounds?

A. If you want to find out, why should there be the excess weight on 100 bunches of roses over such a differential that you have on those two bills there?

Q. In one case, Mr. Zappettini, I notice that the boxes are three feet, and in the other case, four feet. Is there not a difference of length?

A. There should be a little difference, but not that amount of difference. You see, the weight is exceptionally extravagant. The weight on that 100 bunches of roses is about the same, because the roses are about the same size that we ship, and there should not be any such extravagant difference.

Q. You are not contesting these weights, are you, Mr. Zappettini?

A. Well— [940]

Q. As a matter of fact, Mr. Zappettini, you do your own weighing, do you not?

A. I don't know if we do or not.

Q. Now, Mr. Zappettini, you know that the shipper weighs and the air lines and the forwarders accept your weight. You do know that, do you not?

A. I beg your pardon.

Of course, this is shipped by the other company. I do not know if they did or not. Presumably, perhaps they do.

Q. In your own case, Mr. Zappettini, don't you make your own weights up?

A. We do.

Q. You do, do you not?

A. Yes.

Q. And Airborne takes your weights, does it not?

A. Yes.

(Testimony of William Zappettini)

Q. And the air lines take your weights when they deliver for you, do they not? A. Yes.

Q. So, on this Airborne bill, that 285 pounds was what they weighed, is it not?

And you used bills like that to make these comparisons that you have testified about?

A. I made this comparison because I thought it was large enough to haul in evidence. [941]

Q. I see. You have based your testimony on comparisons made from this particular bill?

A. No, that is just one instance.

Q. You carry insurance on your flower shipments? A. No.

Mr. Wolf: Thank you, Mr. Zappettini.

No further questions.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: I have a few questions, Mr. Examiner.

Q. (By Mr. Stowell): You have been an officer with Bay Area since it was organized, have you not, Mr. Zappettini? A. Yes.

Q. During the entire time of your administration, has any application for membership ever been refused?

A. To the best of my recollection, no.

Q. Mr. Zappettini, do you know the names of the air lines which are now used by Bay Area?

A. I think I do.

Q. Would you prefer that I ask questions of Mr. Barulich?

(Testimony of William Zappettini)

A. Well, you can ask him. He knows better than I do.

Q. I have some detailed questions about the air lines used, points and routings. A. Fine.

Mr. Stowell: Mr. Gaudio, will you plan to put Mr. [942] Barulich on the stand?

Mr. Gaudio: Yes.

Mr. Stowell: I would like to ask him about this routing circular. I will defer further questions of Mr. Zappettini.

I do have one more question.

Q. (By Mr. Stowell): Do you recall, Mr. Zappettini, whether you ever signed any other routing instructions than the one which is marked for identification as BA Exhibit No. 16?

A. Yes, I believe I saw this.

Q. Can you remember whether you ever signed any other?

A. Well, to my recollection, we may have instructed our traffic manager to ship it through other air lines than this.

Q. Can you remember any specific ones?

A. No, not any one particular line.

Mr. Stowell: I have no further questions.

Examiner Walsh: Any Redirect, Mr. Gaudio?

#### Redirect Examination

By Mr. Gaudio:

Q. Mr. Zappettini, in your experience with Bay Area as a shipper, this question of the insurance

(Testimony of William Zappettini.)

claims, and settling of the matter through an adjuster is eliminated, is it not, or is it?

A. Yes.

Q. So you do not have any of those kinds of problems any more? [943]

A. No, not with Bay Area.

Q. As you previously testified, if there is a shipment lost, damaged or destroyed, and it is nobody's fault, you are out; is that correct?

A. Correct.

Q. Did you feel obliged to pay Airborne more than \$1,000 if they owed you \$4,700 and some-odd dollars at that time?

A. Well, the letter shows that Airborne, we owed them for some freight, and I did mail them a check. My instruction was not to send them any money, but I did send them a check for the air freight.

Q. But, notwithstanding, during that period, they were indebted to you in the sum of \$4,735.17?

A. The amount was larger than \$4,000, whatever the check shows.

Q. You mean the amount of the outstanding C.O.D.'s? A. C.O.D.s and other charges.

Q. Was this figure an adjustment between what you owed Airborne and what Airborne owed you?

A. Yes.

Q. I see. All of the applications for memberships are passed upon by the Board of Directors, are they not? A. Correct. [944]

Q. In like manner, failure of a member to pay dues is reported to the Board of Directors, and he

(Testimony of William Zappettini.)

is accordingly dropped; is that correct?

A. Correct.

Q. The record shows, Mr. Zappettini, that the articles of formal incorporation in the first instance were filed with the Secretary of State on June 14, 1950, but was any time lapsed after that necessary in order to get the organization under way and functioning, do you remember?

A. Well, I think there was a certain amount of time.

Q. I meant June 14, 1949. I am sorry.

A. Yes.

Mr. Gaudio: I think that is all.

Mr. Wolf: May I ask one question, Mr. Examiner?

Examiner Walsh: Mr. Wolf.

#### Recross-Examination

By Mr. Wolf:

Q. Mr. Zappettini, you have finished testifying that you sent Airborne a check for these pre-payment charges which were in dispute? A. Yes.

Q. When?

A. When I received the statement.

Q. Can you produce the cancelled check?

A. Yes, it is attached on there. [945]

Q. Your check?

A. My check is attached to that, yes.

Q. Mr. Zappettini, counsel has handed me a few documents in reply to my question.

(Testimony of William Zappettini.)

I show you here a statement which apparently was attached to an Airborne check, dated July 7, 1950, on which is stated, "Final Payment covering all C.O.D.'s and Claims payable as of July 7, 1950." Check in the sum of \$500.

I also show you a statement——

A. 3-15-50.

Q. I also show you a statement which was attached to an Airborne check, dated March 15, 1950, which states, "Final settlement covering all C.O.D.'s, claims due and payable as of March 15, 1950. Zappettini Company, San Francisco, Los Angeles and Dallas. \$2,500."

Those two statements were received by you with the checks attached, were they not? A. Yes.

Q. So all those earlier C.O.D.'s were finally settled up, were they not? A. That is right.

Q. In round amounts? A. That is right.

Mr. Wolf: Mr. Examiner, I ask that these two statements just identified by the witness be introduced as Airborne's [946] exhibits next in order, the statement of March 15, 1950, and of July 7, 1950.

Mr. Gaudio: I have no objection to the receipt of them.

I might ask Mr. McPherson some questions in that connection, later.

Examiner Walsh: Are these Mr. Zappettini's records, or Airborne's records?

Mr. Wolf: Those were sent to you, Mr. Zappettini?

The Witness: Yes.

(Testimony of William Zappettini.)

Mr. Wolf: And these are part of your records?

The Witness: Part of our records. We record on our books those checks received.

Examiner Walsh: Do you have anything in your records——

The Witness: No, this is the only record we have.

Mr. Gaudio: Is this your document, this green document?

The Witness: That is our document.

Mr. Wolf: Mr. Zappettini just took those out of his pocket when I started examining him.

Mr. Gaudio: Yes, I know.

Examiner Walsh: These appear to be original records, and I am wondering whether he has any other record of these particular transactions, and whether he would have further need for these documents in his file?

If he has, they could be photostated, probably.

Mr. Wolf: Mr. Zappettini, do your records show that these [947] checks were entered in your books?

The Witness: I presume they were entered in the books, but that is the only record that we have physically on hand.

Examiner Walsh: Do you object to having these submitted, the originals submitted in evidence?

Mr. Gaudio: Can they be read into the record, or make whatever extracts you wish?

Mr. Wolf: Suppose I read them in full.

Examiner Walsh: Yes.



(Testimony of William Zappettini)

Mr. Wolf: Then we can give them back to Mr. Zappettini.

Examiner Walsh: That probably would be better.

Mr. Wolf: The first statement which I will read into the record is the bottom of a check which has been attached to the check by perforation. It is headed, "Airborne Flower & Freight Traffic, Inc." Over to the left, at the top, it says, "Please detach before depositing. No other receipt necessary."

To the right, at the top, it says, "When detached and paid, the above check becomes a receipt in full payment of the following account." Then there follows columns setting forth dates, names, earnings, deductions, net amounts paid.

Written across those columns, in ink, are the words: "Check No. 3911, \$2,500."

Mr. Gaudio: Would that be an Airborne check, Mr. Wolf?

Is that what you are trying to establish?

Mr. Wolf: Yes. [948]

Mr. Gaudio: What would be the date of that check?

Mr. Wolf: Just below that, the date, 3-15-50, appears, and under the word "description" is written, "Final Settlement covering all C.O.D.'s, claims due and payable, as of March 15, 1950. Zappettini Company, S F, L A, and Dallas."

The second statement is in the same form, and is dated 7-7-50. In ink, under the word "description" appears "Second Final Payment covering all

(Testimony of William Zappettini)

C.O.D.'s and Claims payable as of July 7, 1950."

Those checks were received by you, Mr. Zappettini?

The Witness: Yes.

Examiner Walsh: You indicated the amounts, did you not, Mr. Wolf?

Mr. Wolf: Yes, Mr. Examiner.

Q. (By Mr. Wolf): I show you a statement of Airborne Flower & Freight Traffic, Inc., addressed to William Zappettini Company, showing a balance due of \$5,169.97. There is no date on this statement.

Do you know when you got it?

A. They did not put any on at that time.

Q. You have also handed me an Airborne letter dated June 22, 1949. Was this letter and statement received together?

A. I do not think so, no. I doubt it very much.

Q. Mr. Zappettini, you have handed me a copy of a letter dated June 23, 1949, addressed to Airborne, signed by William [949] Zappettini Company, which states as follows: "Gentlemen: Enclosed herewith is our check amounting to \$1,000, to be applied toward our account. We find this to be the only feasible way in which to make a payment to you, due to there being so many claims and differences in this matter.

"As soon as our bookkeeper, Mr. Bacigalupi, returns from his vacation, I will check this matter with you, in order to settle this account.

(Testimony of William Zappettini)

“Trusting you will find same in order, we are, very truly yours, William Zappettini Company.”

Now, in June of 1949, you said that there were many claims and differences in this matter, and you sent a check to Airborne on account of \$1,000; is that correct?      A. That is correct.

Q. And were you hoping that you would be able to straighten out the rest of it in the future?

A. Correct.

Mr. Wolf: Thank you.

Examiner Walsh: Was that money due and owing Airborne on the statement of account?

Mr. Wolf: Yes.

Q. (By Mr. Wolf): Now, Mr. Zappettini, having called to your attention the fact that you sent Airborne a check for \$1,000 on June 23, does this statement of \$5,169.97 from Airborne to [950] William Zappettini & Company, call to your mind the fact that you received that, and then sent Airborne a check for \$1,000?

A. I do not know if we did send a check for this statement here. I do not know if we did anything with it.

Q. Here is a letter of June 22 from Airborne to you——

Examiner Walsh: What year?

Mr. Wolf: 1949. (Continuing): ——which states: “As requested in our telephone conversation of yesterday, enclosed please find statements to your account. I hope that this is the information you desire. If we can be of any further service to

(Testimony of William Zappettini)

you, please do not hesitate to call on us." Signed by Airborne.

Now, with that letter, and that statement, and the fact that you sent Airborne a check within a day thereafter for \$1,000, would it be your best recollection that the statement came to you with this letter of June 22, 1949?

A. I could not say about this statement. My document shows here when we mailed them the check. I think perhaps it was—this letter was the 22nd of June, 1949, and I mailed the check on June 23, the next day. But I do not know, especially in this letter here, there is no information in that, no detail on that statement.

Q. I understand, Mr. Zappettini. I call to your attention the fact that this morning you have taken from your pocket this statement from Airborne to you, the letter of June 22, 1949, your answer of June 23, 1949, with which you enclosed a [951] check to Airborne for \$1,000.

Can you recall why you put this statement in your pocket with these other documents?

A. I found those documents, and I just put everything in the envelope of this one, to bring them over here. But there is nothing indicating there when that came in.

Q. This statement was, however, received by you at some time?           A. Yes.

Q. And it shows that you owed Airborne \$5,169.97 at some time?

A. Yes, according to that figure.

(Testimony of William Zappettini)

Q. And you have made some deductions there?

A. That is right.

Q. Now, let us see what these deductions were, from this statement. C.O.D. charges, \$118.24.

A. Where is that?

Q. Right there.

A. Yes, that is subtracted from the C.O.D. up there for \$1,000.

Q. That is right.

A. This was received in the meantime, in other words.

Q. Yes. And \$12.22 was added back on?

A. That is right.

Q. But you cannot recollect when you got [952] this?

A. I cannot recollect when we did get that.

Q. Mr. Zappettini, can I point this out to you, that in the upper left-hand corner of the Airborne letter of June 22, 1949, and this statement, that you cannot recollect where you got, there appears to be two little holes such as are made by a stapling machine. Do you notice that?

A. Yes, sir.

Q. Those two fit over each other?

A. They are right together.

Q. The statement and the claim fit together?

A. Not that I know. We had them filed together. We have a file that big.

Q. All right, Mr. Zappettini. Now, if you look closely—come here and look on with me—you will find another two holes of staples, about four inches over across the top of the letter, and these two

(Testimony of William Zappettini)

staple holes run slightly in a diagonal direction.

You see those two?           A. Yes.

Q. And those fit over each other, like that?

A. Yes. Our office——

Q. Just a minute. Let us see if we can find some more.

A. You can find all kinds of holes.

Q. Just a little bit below, and about an inch and a half from the left side of the letter, are two more staple holes set close together, running on a diagonal, and the staple holes [953] appear——

A. Let me examine this.

Q. You examine it very carefully.

A. You got all kinds of holes in that.

Q. But those three sets of staple holes that I have just pointed out to you——

A. That holds those two pieces of paper together.

Q. I see. And when were they clipped together?

A. They might have been clipped half a dozen times together. As I recall, we had to go into this with Mr. Airborne a hundred times over those previous invoices, and the statement, and irregularities that we had, and we had a statement mailed to us from time to time. We pulled them apart half a dozen times, those pieces of paper, and put them together half a dozen times, again, in order to keep the record.

Q. I understand, Mr. Zappettini. I am simply trying to examine these documents, and simply trying to have you look at these. After examining

(Testimony of William Zappettini)

the punctured holes, wouldn't you now say that the letter and the statement came at the same time?

A. I could not say.

Mr. Wolf: If the Examiner please, I think that from the testimony that has been adduced here, there would be a fair inference drawn——

Mr. Gaudio: We can argue it later.

Examiner Walsh: Do you want to introduce that? [954]

Mr. Wolf: I will introduce this as one exhibit, with "A" and "B" after the number.

Examiner Walsh: We will identify this as Airborne's Exhibit No. 8.

The undated statement made from Airborne to William Zappettini Company, is marked for identification as Airborne's Exhibit No. 8-A, and the letter from Airborne to William Zappettini Company, of June 22, 1949, is marked for identification as Airborne's Exhibit No. 8-B.

(The documents above referred to were marked for identification as Airborne's Exhibits Nos. 8-A and 8-B.)

Q. (By Mr. Wolf): Do you recall, Mr. Zappettini, that the settlement of the C.O.D.'s and the insurance company claim, and the freight charges owing by you to Airborne, were delayed very many months? There was a long delay until everything was settled up?

A. The claim naturally was delayed, that I know.

(Testimony of William Zappettini)

Q. That is right. Do you recall that your book-keeper, Mr. Bacigalupi, asked that it be delayed?

A. The claim?

Q. The settlement, the final settlement.

A. I do not think he wanted it delayed. He was very much in favor of the settlement. [955]

Q. You do not remember that?

A. I do not remember. He was very anxious. You can see by our letters, the correspondence, that we tried to get a settlement as soon as possible.

Mr. Wolf: That is all, Mr. Zappettini.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: No questions.

Examiner Walsh: Mr. Gaudio?

### Redirect Examination

By Mr. Gaudio:

Q. Mr. Zappettini, according to the stamp from your office, this letter from Airborne, Exhibit 8-B for identification, was received in your office on June 22, 1949; is that right?

A. That is correct.

Q. But later for C.O.D.'s dating from May 1, 1951, until May 31, 1951, there was a further accumulation of C.O.D.'s, totaling \$4,536.17, as demonstrated on BA Exhibit No. 15; is that correct?

A. That is correct.

Q. And according to the attachment to BA Exhibit No. 15, you wrote once on June 7th, making a demand for payment, and another time on June 8th; is that correct?

A. That is correct.



(Testimony of William Zappettini)

Q. Correction on that. Your original inquiry was dated [956] June 7, but issued on June 8, as indicated on this exhibit. These sums in addition, then, to whatever accountings are indicated in BA Exhibit 8-A?

A. Their statement has no way to indicate just what that is. It shows numbers, but it has no detail, and does not refer to any particular date and time.

Mr. Gaudio: That is all.

Mr. Wolf: No further questions.

Examiner Walsh: If there are no further questions of Mr. Zappettini, he may be excused.

(Witness excused.)

Examiner Walsh: We will take a 5-minute recess.

Mr. Gaudio: May we first ask that the exhibits that have been identified be received at this time?

Examiner Walsh: Bay Area's Exhibits Nos. 13 through 17 have been offered in evidence. Are there any objections? Hearing none, they are received.

(The documents marked as Bay Area's Exhibits Nos. 13 through 17, inclusive, were received in evidence.)

Examiner Walsh: Now, would you like to move yours, Mr. Wolf?

Mr. Wolf: I offer Airborne's Exhibits 8-A and 8-B in evidence.

Examiner Walsh: Any objection?

Mr. Gaudio: No objection. [957]

Examiner Walsh: Airborne's Exhibits 8-A and 8-B will be received in evidence.

(The documents marked as Airborne's Exhibits Nos. 8-A and 8-B were received in evidence.)

Examiner Walsh: We will take a short recess.

(Short recess taken.)

Examiner Walsh: Come to order, gentlemen.

Mr. Gaudio: At this time I would like to call Mr. Bonaccorsi.

Whereupon,

**JAMES F. BONACCORSI**

recalled as a witness for and on behalf of Bay Area, having been previously sworn, was examined and testified further as follows:

**Direct Examination**

By Mr. Gaudio:

Q. Mr. Bonaccorsi, you recall the discussion in connection with Bay Area's Exhibit No. 12 regarding the disparity of charges?      A. Yes.

Q. I show you these two documents, and ask if they represent shipments in your behalf?

A. Yes, they do.

Q. Are they identical shipments to the same consignee?

A. Yes, they are identical shipments to the same consignee, [958] within a few days apart.

Q. What were the charges?

A. The charges on one were \$15.48, and the other was \$23.09.

(Testimony of James F. Bonaccorsi.)

Q. What type of shipments, dimensional or actual weight, were they?

A. On each one, there were two boxes, dimensions 13 by 17 by 11, cut flowers, actual weight 36. And the same dimensional weight, 38, a few days later.

Q. What is the approximate difference between the two charges?      A. About \$5, I presume.

Q. Is that an isolated instance in your case?

A. No.

Mr. Wolf: Just a minute, Mr. Examiner. I make the same objection, that we are trying to confine comparisons as of the date of forming Bay Area.

Mr. Gaudio: We are not making comparisons. This is not for the purpose of making comparisons. These are both Airborne shipments, are they not, Mr. Bonaccorsi?

The Witness: Yes, they are.

Q. (By Mr. Gaudio): In this item of identical shipments going to identical consignees, there was an element of consideration in forming Bay [959] Area?      A. Definitely was.

Q. As a member shipper and director of Bay Area, have you found that the measure of control which you as a shipper exercise through the Executive Secretary, has eliminated this question of diversity for the same type of shipment?

A. It certainly has.

Mr. Gaudio: You may cross-examine.

Examiner Walsh: Cross-examination, Mr. Wolf?

(Testimony of James F. Bonaccorsi.)

Do you intend to have these marked for identification and offered in evidence, Mr. Gaudio?

Mr. Gaudio: Not particularly. I just wanted the classifications.

Q. (By Mr. Gaudio): One further question, in that connection, Mr. Bonaccorsi. On these bills, identical items are covered, and rates projected for the service rendered, on each shipment. In other words, each shipment shows a direct charge plus pickup, and compilation?

A. At least it is printed in the invoice manifest, but on these particular ones, there is no pickup charge shown there.

Mr. Wolf: Mr. Gaudio, have you finished?

Mr. Gaudio: Yes.

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Bonaccorsi, with the same dimensional weight in [960] here, the same number of boxes, same size, same everything, it is pretty obvious that one of these air bills is wrong?

A. It is obvious that something is wrong, yes.

Q. Do you remember whether a claim was made against you to make up a deficiency, or did you receive a check back for an overcharge on either of these?

A. No, I do not remember of anything.

Q. You do not remember?

A. In fact, this happened purely by accident. I happened to bring some manifests, and I was

(Testimony of James F. Bonaccorsi.)

going through them, and I just noticed that today.

Q. I would advise you, Mr. Bonaccorsi, to file a claim on one of these, if the overcharge is present.

A. Thank you.

Mr. Wolf: They are dated January, 1952.

No further questions.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: No questions.

Mr. Gaudio: That is all, Mr. Bonaccorsi. Thank you.

Examiner Walsh: Thank you.

(Witness excused.) [961]

\* \* \*

### JAMES F. BONACCORSI

recalled as a witness for and on behalf of Bay Area, having been previously sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Gaudio:

Q. Mr. Bonaccorsi, you were a director in the early part of 1950 of Bay Area?

A. Yes. [1094]

Q. Do you recall attending a meeting of the Board of Directors during April or May of 1950, at which a letter from Mr. McPherson, addressed to Mr. Zappettini as president, was discussed?

A. Yes, I was.

Q. Who was present at that meeting?

(Testimony of James F. Bonaccorsi.)

A. All the board members were present at that time.

Q. Was Mr. McPherson there?

A. Mr. McPherson was not there when the letter was brought to the attention of the board members, but at that particular meeting it was discussed that we invite Mr. McPherson to a meeting for the purpose of finding out just what he had in mind.

Q. And did he attend a later meeting?

A. He did. I think a week later.

Q. And the board members were \*present?

A. That is correct.

Q. You were present?                   A. Yes.

Q. What did Mr. McPherson state to the Board of Directors at that time?

A. In the letter he suggested that if all the florists would ship together all their shipments, pool all their shipments, that they could get a cheaper rate by consolidating.

In other words, with more flowers they could carry a lower rate. And I asked Mr. McPherson a question at that time, if all [1095] the present people who are shipping through him could become members of Bay Area, and ship all the flowers through Bay Area, if he would object to it at that time. And he said he did not, because the purpose was that he was to act as Agent for the floral industry, with the understanding, of course, that we would have a traffic manager supervising the floral industry, in other words, looking out for the florists.

(Testimony of James F. Bonaccorsi.)

Q. Were those conditions acceptable to you and the other members of the board, provided they were met?      A. Provided they were met, yes.

Q. And at a subsequent date, did you discover that that was not Mr. McPherson's intentions at all?      A. I did.

Q. And was that a motivating factor in your and Mr. Zappettini's decision to withdraw from the organization?      A. Yes.

Mr. Gaudio: That is all.

Examiner Walsh: Mr. Wolf.

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Bonaccorsi, in answer to the last question, you stated something about that was not Mr. McPherson's intentions. Could you clarify that statement?

A. Well, if a person tells me one thing and means something else—— [1096]

Q. Just a minute. What were Mr. McPherson's intentions that you discovered?

Mr. Gaudio: Just a moment, Mr. Bonaccorsi. I will object to the question as calling for the witness' conclusion.

I have no objection to Mr. Bonaccorsi stating in so many words what Mr. McPherson told him and the group.

We will let the Examiner determine what his intentions were, from those statements.

(Testimony of James F. Bonaccorsi.)

Mr. Wolf: In answer to your last question, Mr. Gaudio, Mr. Bonaccorsi said that he discovered that that was not Mr. McPherson's intentions. Now, I want to find out—

Mr. Gaudio: On what he bases that statement?

Mr. Wolf: What were these intentions, yes.

The Witness: I was told, as I previously testified, that at this particular meeting, Mr. McPherson was going to agree to these questions that I brought out. He agreed to do certain things.

During the course of our negotiations, as we went along, each time we went deeper, we would get sidetracked. First it was supposed to be Bay Area that was supposed to be the group that the shipments were going through; then it was decided no, we were going to form another association. I do not say that Mr. McPherson himself came out about forming this new association. Perhaps he had nothing to do with it. I would not say that.

But at one time, in one of the meetings which Mr. McPherson [1097] attended, there he said there was no need for a traffic manager. He decided that he would joint load with whom he pleased. In other words, our member growers.

When those things came about, I began to see—well, we just threw up our hands. Anyway, he gave me enough evidence that he was not adhering to what he agreed to do. All I was interested in was to have an industry movement that would benefit the industry, for the good of the industry, and we were not getting it through Mr. McPherson.



(Testimony of James F. Bonaccorsi.)

Q. Mr. Bonaccorsi, you were not shipping by Mr. McPherson at that time, were you?

A. I think I was shipping something through him, yes.

Q. But you were not shipping in consolidation through him, were you?

A. That I do not know.

Q. You do not know?

A. That is correct, I do not know.

Q. You were a member of the Bay Area consolidation, were you not?

A. That is correct.

Q. So your consolidated shipments went out by Bay Area, did they not?

A. Some of them, as I heard today——

Q. I am not asking about those. I am asking about your shipments, Mr. Bonaccorsi. [1098]

A. If my shipments——

Q. Did your shipments go out by consolidation other than Bay Area consolidation during this period you are speaking of?

A. I believe there was a two-weeks period where all my shipments, all my air shipments, were tendered to Airborne, where they were supposed to have gone out on consolidation.

Q. The original plan you have stated was discussed by your members as proposed by Mr. McPherson, involved generally speaking, cheaper rates on flower shipments; is that correct?

A. You are referring to the letter? Yes.

Q. That is the first meeting you are talking

(Testimony of James F. Bonaccorsi.)

about, now?           A. That is correct.

Q. And was there any indication by Mr. McPherson at any later date, that if the plan had been followed out, the flowers would not have gone on cheaper rates?

Mr. Gaudio: I submit, Mr. Examiner, we are indulging in speculation now. We are talking about something that might have occurred if the organization had gone forward.

Mr. Wolf: I will withdraw that question. It is a little bit hypothetical.

Q. (By Mr. Wolf): Did Mr. McPherson indicate at a time subsequent to this first meeting where he was present, that you would not receive cheaper rates on flower shipments?

A. Yes. In one instance, I brought it our earlier in [1099] the testimony, when I asked Mr. McPherson if he joint-loaded the members' shipments with E. W. McClellan & Company, would the members get the same rate as McClellan would, and his answer was no. So I believe that answers your question.

Mr. Wolf: Thank you, Mr. Bonaccorsi.

Mr. Stowell: No questions.

Examiner Walsh: Mr. Gaudio?

#### Redirect Examinaton

By Mr. Gaudio:

Q. That two-week period that you refer to was the two-week period when Reynolds had removed

(Testimony of James F. Bonaccorsi.)

his trucks from Bay Area's service; is that not correct?      A. That is correct.

Mr. Gaudio: That is all.

Examiner Walsh: Are there any more questions of Mr. Bonaccorsi?

Mr. Wolf: Yes.

Recross-Examination

By Mr. Wolf:

Q. We are talking about these Reynolds trucks. Do you know how many trucks Reynolds sold to Airborne?      A. One truck, I believe.

Q. One truck? Do you remember the date of the sale?      A. No, I do not, not the exact date.

Q. Do you remember that it was August 24, 1950? [1100]

Mr. Gaudio: Just a moment.

Mr. Examiner, I merely wanted to clarify that two-week period when Reynolds' trucks were removed from the service of Bay Area. I made no reference to a sale, and the record is clear already by other witnesses as to the date of the sale, and what was sold.

I object to the question as improper Redirect or Recross.

Examiner Walsh: I believe that is correct.

Mr. Wolf: I asked a question, Mr. Examiner. What was the ruling on it?

I asked if Mr. Bonaccorsi knew that the date of sale of one truck was August 24, 1950.

(Testimony of James F. Bonaccorsi.)

Mr. Gaudio: I object to the question as improper Recross.

Examiner Walsh: I believe he testified he could not remember.

The Witness: I do not remember, not the exact date.

Mr. Wolf: You do not remember?

The Witness: Not the exact date.

Mr. Wolf: Nothing further. Thank you.

(Witness excused.) [1101]

\* \* \*

#### ALFRED G. ENOCH

was recalled as a witness for and on behalf of Bay Area, and having been previously sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Gaudio:

Q. Mr. Enoch, early in 1949, were you handling your shipments direct with the air lines to eastern destination stations?

A. Yes, most of them.

Q. I show you two air bills, and attached documents, in the form of consolidation manifests, and ask you if these two documents, one with the Flying Tiger Lines, Inc., and another, Slick Airways, Inc., are shipments which you handled at that time?

A. Yes, that is right.

Q. Now, the Flying Tiger shipments, dated

(Testimony of Alfred G. Enoch.)

March 26, 1949, and the other, dated March 24, 1949, all of this method of [1113] operation on your part was prior to any organization now known as Bay Area?

A. That is right.

Q. Will you briefly describe how you arranged for the handling of your shipments on each of those instances?

A. You mean how did I arrange for consolidation, or how did I do the shipping?

Q. How did you do the shipping and arrange for the consolidation?

A. Through the air lines. I cannot tell who or where or what, but I found out about this prepaid, or even collect distribution, and so on my own initiative, I started grouping my shipments. For instance, if we had Cleveland, instead of shipping them four times a week, we would cut it down to three times a week, shipping into Cleveland, or maybe even two times a week, so as to give us a larger volume, so we could get into a higher weight bracket.

And we would consolidate our own shipments. We would take a lot of them to the airport. We had a lot of them hauled to the airport, and the airlines charged us 25c for each shipment, for distribution charge. And then the total cost would be on these particular ones. We had them delivered to the airport, paid therefor a truckage company to haul them. They were taken from our place of business to the airport, and transported to Cleveland on one,

(Testimony of Alfred G. Enoch.)

Chicago on the other, and this included the [1114] cost of distribution, which meant delivery downtown; or also delivery to the surface carrier.

Q. Transfers?

A. Transfers. And there is no arrangement to it. Slick had their own assembly or distribution manifests that we used.

On the Tiger one, we used our own mimeographed form that we ourselves made.

Q. Will you just state for the record what your average per box developed to be on the Slick Airways shipment?

A. On the Slick Airways shipment, it was approximately \$4.47 a box, and on the Flying Tiger, it was \$4.85 a box to Cleveland. The Slick one was to Chicago.

Q. Now, turning to the consolidation sheets, on each of these representative transactions, in the event there is a single box going to an ultimate consignee, as demonstrated on the consolidation sheet, what has your experience been, if any, via a common carrier service such as Arborne has, in the cost per box in such instances?

Mr. Wolf: Just a minute.

Mr. Examiner, I would like this related in point of time.

Mr. Gaudio: Very well.

Q. (By Mr. Gaudio): During, at, or about the time when these shipments were taken?

A. I think I can answer to that, that practically ever [115] since I have been in season, outside of the

(Testimony of Alfred G. Enoch.)

first start of the season when the flowers are high, it is almost impossible to ship a single box through any carrier.

Q. In other words, your experience as demonstrated by these exhibits, impelled, insofar as your business is concerned, the need for larger shipments? A. That is right.

Q. And the larger the shipment, the lesser cost to you, and the more profit in your consignment sales; is that correct? A. That is right.

Q. Was it your inquiry as a consequence of this disclosure as to the cost of transportation that invited your attention to the organization of a group such as Bay Area is?

A. Yes. It first started as a group—American Airlines first started their air freighter.

Q. That purpose was even more apparent when collect distribution was discontinued; is that right?

A. Oh, definitely.

Mr. Gaudio: May we offer these as respondent's exhibits next in order, for the record at this time?

Examiner Walsh: The air bill of Slick Airways, and attached manifest, will be marked for identification as Bay Area's Exhibit No. 27.

You are offering it at this time, are you?

Mr. Gaudio: Yes. [1116]

Examiner Walsh: Any objection?

Mr. Wolf: No objection.

Examiner Walsh: Hearing none, Bay Area's Exhibit 27 is received.

(The document above referred to was marked

(Testimony of Alfred G. Enoch.)

for identification as Bay Area's Exhibit No. 27, and was received in evidence.)

Examiner Walsh: The air bill of the Flying Tiger Line, and attached manifest, marked for identification as Bay Area's Exhibit No. 28, is received in evidence without objection.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 28, and was received in evidence.)

Mr. Gaudio: I have no further questions of Mr. Enoch.

Examiner Walsh: Mr. Wolf.

#### Cross-Examination

By Mr. Wolf:

Q. Mr. Enoch, you stated that when collect distribution or prepaid distribution, as the case may be, went out of the picture, that you felt more than ever the need for the Bay Area service; is that correct? A. That is correct.

Q. Do you know when collect distribution was declared invalid by the Civil Aeronautics Board?

A. No, I do not believe I could give you the date. [1117]

Mr. Wolf: Will you stipulate on that date, counsel?

Mr. Gaudio: I do not know the date, but if you will tell me, I will stipulate it.

Mr. Stowell: I will say that in December of



(Testimony of Alfred G. Enoch.)

1950, the board issued its final opinion in a case of **the investigation of accumulation, assembly and distribution rules, Dockets 1705, et al.**, which were decided September 14 and December 20, 1950, the former being the tentative opinion, and the latter being the final opinion of the board. And that opinion required the carriers, if they desired to have a distribution service, that it must be on a prepaid basis.

Mr. Wolf: Mr. Enoch, I will call your attention, for instance, to the Flying Tiger Line air bill with manifest attached. I notice that there were 25 boxes in that shipment. The original destination point was Cleveland, and from there, a certain number of boxes went to Boston, Youngstown, Buffalo, Canton, Pittsburgh, and the remainder of the boxes were dropped off at Cleveland. Is that right?

The Witness: That is right.

Q. (By Mr. Wolf): Now, when you made a shipment such as this one, it went as one shipment, so far as you were concerned, did it not?

A. As far as I was concerned.

Q. And there was no charge against you for cutting new air bills at Cleveland? [1118]

A. The only charge was distribution charge.

Q. Of \$2.50 on this particular one?

A. 25c a shipment, regardless of boxes.

Q. This was without any delivery charge other than that?

A. Well, distribution charge is on that end, is it not?

(Testimony of Alfred G. Enoch.)

Q. Do you not recall that on shipments such as this, that the distribution would be made by a local trucker and arranged for by the air line?

A. Not to my knowledge, in any way whatsoever.

Q. When Bay Area came into existence, there is a delivery charge, is there not, at the far end?

A. That is right.

Q. I call your attention to the Slick Airways air bill and the manifest covering 11 boxes of decorative greens, and numerous cities are mentioned there—St. Paul, Columbus, Milwaukee, Columbus, Indianapolis, and Chicago. So far as you were concerned, that went as one shipment?

A. That is right.

Q. And the air lines did the entire performance from the time you handed it to them; is that correct?

A. This air line calls it "consolidation charge."

Q. Of 25c per box?           A. Per shipment.

Q. How about a delivery charge at the other end?

A. I prepaid, and that is the bill they presented to me, [1119] and they never gave me another bill, so that must have been all.

Q. I see. What is this item, "advance charges, \$5.67, R.B.?"

A. These particular boxes were hauled by a trucking company, namely, Reynolds Brothers.

Q. I see. That would be a pickup charge?

A. On this end, that is correct.

(Testimony of Alfred G. Enoch.)

Q. And that type of service did not go out until December of 1950; is that correct?

A. I cannot say that that is even when it went out. They may have put it out on the first—you gave two dates, September and December—it could have gone out on either date, I do not know.

Q. If in this case of Cleveland—well, as a matter of fact, there appears to be, here on this Cleveland shipment, a certain number of boxes, 10 of them, which were to be delivered in Cleveland. Was there any delivery charge on those local deliveries?

A. I was forwarded no other bills. It says here “This is your invoice,” and gives total charges, and that is it.

Q. So that is all that was paid for these shipments; is that correct?

A. As far as I know, yes.

Q. Now, when Bay Area came into existence, there is a delivery charge, is there not, Mr. [1120] Enoch?

A. That is right.

Mr. Wolf: Thank you.

The Witness: But it is offset by our larger volume of weight.

Mr. Wolf: Thank you, Mr. Enoch.

Mr. Gaudio: Just one closing question, Mr. Enoch.

### Redirect Examination

By Mr. Gaudio:

Q. For the period that collect distribution was in effect, during Bay Area's initial period—that is,

(Testimony of Alfred G. Enoch.)

from 1949 through December of 1950—the service you have just described, which was handled on your own initiative, was also available for you through Bay Area in the larger consolidations, was it not?

A. That is right. We did use it on certain air lines.

Mr. Gaudio: That is all.

Examiner Walsh: No further questions?

Mr. Wolf: No questions.

Examiner Walsh: You may be excused, Mr. Enoch.

(Witness excused.) [1121]

[Endorsed]: No. 13727. United States Court of Appeals for the Ninth Circuit. Consolidated Flower Shipments, Inc.-Bay Area, Petitioner, vs. Civil Aeronautics Board and Airborne Flower and Freight Traffic, Inc., Respondents. Transcript of the Record. Petition to Review an Order of the Civil Aeronautics Board.

Filed May 18, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

